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From the Editor:

In this issue . . .

AARON L. FRIEDBERG examines how the events of the late 1980s and early 1990s will combine with longer-term trends to shape the further evolution of American political power. He concludes that the end of the cold war will accelerate the relative decline in American national power and usher in a protracted period of international instability.

ROBERT A. DAHL argues that the Maastricht Treaty presented Europeans with a fundamental democratic dilemma: choosing between their political effectiveness as citizens within their countries and the effectiveness of the European Union as a transnational system.

MARIE ANCHORDOGUY analyzes Japan's strategic trade and industrial policy toward supercomputers and finds them effective in helping create a strong domestic industry. She finds that trade friction between the United States and Japan in supercomputers is primarily the result of structural differences in state and corporate institutions.

CHARLES F. FURTADO, JR. analyzes the unsteady brew of nationalism and foreign policy in Ukraine. Tracing domestic and international factors, Furtado suggests policy strategies to prevent the radicalization of Ukrainian nationalism and its foreign policy.

ELIZABETH BUSSIERE draws on the "new institutionalism" literature to explain the Warren Court's refusal to identify welfare assistance as a constitutionally protected right.

ROBERT B. HORWITZ examines the evolution of American administrative law. He argues that the standard of judicial review that seemed to embody the conservative reaction to the so-called imperious judiciary paradoxically accounts for the distinctly checkered judicial treatment of deregulation.

DEMETRIOS CARALEY

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The Future of American Power

AARON L. FRIEDBERG

Over the course of the past half century the United States has declined, but unlike its former Soviet rival it has not fallen. From the point of view of the United States, the relevant questions now are, first, how the end of the cold war will affect the subsequent trajectory of its power and, second, how changes in American power (and, more broadly, in the distribution of power in the international system as a whole) will affect the shape and stability of the post-cold war order. In this article, I shall concentrate primarily on the first set of issues, examining in turn how the events of the late 1980s and early 1990s will combine with longer-term trends to shape the further evolution of American economic, military, structural, "soft" (cultural and ideological), and political power before turning briefly to a consideration of the larger significance of these trends. Because so much is contingent, both aspects of this discussion are necessarily speculative, with the projections of the second portion building on those of the first. Although there are a number of contrary trends, I conclude that on balance the end of the cold war will accelerate the relative decline in American national power. Changes in the distribution of power will lead to mounting disputes over the legitimacy of existing rules and institutions and as a result to a protracted period of international instability. This turmoil is likely to give rise to a set of separate, competing subsystems, not to a new, unified world order.

AARON L. FRIEDBERG is associate professor of politics and international affairs at Princeton University and Director of the Research Program in International Security at Princeton's Center of International Studies.

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American Power and the End of the Cold War

Economic Power

Between the late 1940s and the early 1980s, America's shares of total global output, worldwide production of manufactured goods, world trade, and exports of high technology products all diminished, along with its former wide lead in national economic productivity and its once unquestionable position as the leading source of innovations in virtually every category of technology.[1] With these facts generally agreed to, the decline debate of the late 1980s centered on three issues: first, whether the erosion of the postwar period had run its course or would continue; second, whether it was inevitable (the product both of the worldwide recovery that followed the devastation of World War II and of an ineluctable global diffusion of technological competence and productive capacities) or at least partly the result of mistakes and misguided policies; and, finally, if it was not completely unavoidable, to what extent the relative economic decline of the United States had been caused by the excessive exertions of forty years of competition with the USSR.

The end of the cold war should shed considerable light on each of these controversies, especially the last. We are about to witness that rare event: a natural experiment in which the unfolding of history may actually help to resolve an ongoing scholarly dispute. With the collapse of the Soviet Union, U.S. defense spending (which had been declining since the mid-1980s) began to diminish rapidly, and it is likely to continue to do so for at least the remainder of the 1990s. The United States is already spending a smaller fraction of its gross national product (GNP) on defense than at any time since before the Korean War (around 4.1 percent in fiscal year 1994). Barring some unforeseen international disaster, the figure will fall still further in the years ahead. In all, the share of GNP devoted to defense is likely to shrink to below 50 percent of its Reagan administration peak, from 6.3 percent in 1985 to no more than 3 percent (and perhaps less) by the beginning of the twenty-first century.[2] If in the past the United States was held back in

[1] Various of these indicators are discussed in Paul Kennedy, *The Rise and Fall of the Great Powers* (New York: Random House, 1987), 413–540; see also Joseph S. Nye, *Bound to Lead* (New York: Basic Books, 1990), 69–78; Robert O. Keohane, *After Hegemony* (Princeton, NJ: Princeton University Press, 1984), 36.

[2] The Clinton administration now projects that defense outlays will be 3 percent of GNP in FY 1998. Deeper cuts are a distinct possibility. See Secretary of Defense Les Aspin, "Statement Before the House Armed Services Committee in Connection with the Clinton Defense Plan," (mimeo, 30 March 1993), 19.

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competition with other industrial nations by the comparatively heavy weight of its military expenditures, in the future those burdens will diminish and American economic performance should improve. The end of the cold war may, therefore, provide an opportunity for an enhancement, not only of absolute American domestic welfare, but of relative American international economic power.[3] How realistic are these expectations?

In the short term, the economic effects of the cold war's conclusion have been almost entirely negative. Cutbacks in defense spending have reduced the level of aggregate demand in the American economy and thus slowed its growth. In this way the collapse of communism has already contributed to the protracted recession of the late 1980s and early 1990s and thus, ironically, to the electoral difficulties of the Republican party. Aside from their overall effects, defense reductions have hit hardest at certain industries (notably aerospace, electronics, and shipbuilding) and at the regions of the country in which they happen to be concentrated (especially the "gunbelt" that extends from the far Northeast, down through the South and across the Southwest to the West coast). In all, by the end of the 1990s, the post-cold war builddown will have resulted in the loss of well over one million defense sector jobs, including those of more than 100,000 highly trained scientists and engineers.[4]

As these figures suggest, the end of the cold war will free substantial resources, human as well as financial, from their previous allocation to the manufacture of military power. The issue now and for the future is where those resources will go and, specifically, whether they will be applied effectively to the production of national economic power. One simplified and stylized way of approaching this problem is to ask the following question: Suppose that defense spending does fall from 6 to 3 percent of GNP. What will happen to the 3 percent of GNP

[3] In the discussion that follows I will use size of GNP as a very rough indicator of national economic power. For a concise discussion of the concept of economic power, see Samuel P. Huntington, "The Economic Renewal of America," *The National Interest* 27 (Spring 1992): 15. Also see Klaus Knorr, *Power and Wealth: The Political Economy of International Power* (New York: Basic Books, 1973), 75–104.

[4] For useful overviews, see Office of Technology Assessment, *After the Cold War: Living With Lower Defense Spending*, OTA-ITE-524 (Washington, DC: U.S. Government Printing Office [GPO], 1992); Conrad Peter Schmidt and Steven Kosiak, *Potential Impact of Defense Spending Reductions on the Defense Industrial Labor Force by State* (Washington, DC: Defense Budget Project, March 1992); on the gunbelt, see Ann Markusen, Peter Hall, Scott Campbell, and Sabina Deitrick, *The Rise of the Gunbelt: The Military Remapping of Industrial America* (New York: Oxford University Press, 1991).

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that is freed up as a result? If this fraction of national income is invested (whether by government or private business), the impact on future American economic performance could be positive and substantial. To the extent that it goes to boost present consumption, on the other hand, the long-term benefits will be diminished.[5]

Private investment could be increased most effectively by devoting every dollar saved on defense to reducing the federal budget deficit—in other words, by allowing defense to fall without cutting taxes or increasing nondefense programs. As the deficit shrinks, the government will have to borrow less money, and it will therefore compete less vigorously with private business for scarce capital. The result will be falling interest rates; more investment by industry in new plant, equipment, and research; and in the long run higher rates of growth in productivity and national income. Similar benefits might be derived if some of the savings from defense were used to finance selected public investments, such as improvements in the roads, bridges, ports and communications networks that make up the nation's infrastructure or more spending for education and scientific research.

At the other end of the spectrum of possibilities, the peace dividend could wind up being consumed by either the private or the public sectors. If every dollar saved from defense were given back in the form of tax reductions, private consumption would rise, but the deficit and the level of private investment would remain substantially unchanged. A short-term increase in welfare would be purchased at the expense of slower growth and less substantial increases in future welfare (and power) than would otherwise have been possible. Reductions in military expenditures could also be offset by increases in other forms of public spending that would resemble consumption more closely than anything that might reasonably be labeled investment. Federal dollars devoted to huge pork barrel highway construction projects, for example, or expanded health care and retirement benefits for middle- and upper-income citizens would make some people better off, but their contribution to the long-term economic well-being of the nation would be dubious at best. The problem is that precisely because of their size and the broad dispersal of their benefits, such spending programs have proven enormously popular with large and influential blocks of voters. Cutting them back or even reducing their rate of

[5] For a brief overview, see Congressional Budget Office, *The Economic Effects of Reduced Defense Spending* (Washington: CBO, February 1992), 5–20.

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growth will not be easy. By comparison, some of the more worthwhile forms of public investment such as spending to support basic scientific research or improvements in the health and education of the nation's poorest citizens have never been nearly as popular.

A perfect allocative process would channel the resources freed by defense cutbacks into an optimum mix of public and private investments. In the real world of American domestic politics, however, such an ideal outcome is inconceivable and, indeed it is unlikely even to be approached. To the extent that it is not, however, the benefits that could conceivably have been derived from the end of the cold war will go unrealized.

But the difficulty may lie deeper than the allocative inefficiencies of the American political system. It is possible that a number of the nation's problems will not prove readily susceptible to repair through the simple expenditure of money, whether public or private; and it is even conceivable that some could actually be made worse by well-intentioned but ill-conceived government policies. Drug abuse, violent crime, teenage pregnancy, and declining levels of literacy all represent a drag on national economic performance, both directly through their effects on individuals who might otherwise have become more productive members of society, and indirectly through their diversion of resources to policing, emergency medical care, and unemployment support that in a better world would have been put to more productive uses.

As important as they are, however, it is not obvious that any of these ills could be cured even by massive new government programs, let alone by those that are likely actually to be initiated. For all of their economic implications, most of these problems are not purely or even primarily economic, but rather social or cultural in origin. Their solutions cannot come entirely from above, nor can they take the form simply of a transfer of material resources. If, as some critics now claim, economic rejuvenation depends on "cultural renewal," on the rebuilding of the social and civic institutions that inculcate the values of "self-control, compassion, tolerance, civility, honesty, and respect for authority," then the United States is likely to be saddled with serious (and, compared to most of its competitors, disproportionate) liabilities for many years to come.[6]

To sum up: the end of the cold war will result in some improvement in the performance of the American economy, but positive changes

[6] See, for example, William J. Bennett, "Quantifying America's Decline," *Wall Street Journal*, 15 March 1993.

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are unlikely to be large or to come quickly. As compared to a number of other nations, especially those on the eastern edge of the Pacific rim, the United States will probably continue to grow less rapidly, and its relative economic power will therefore continue to decline as the twentieth century draws to a close.

Military Power

The collapse of the Soviet Union and the fragmentation of its armed forces have left the United States in a position of unquestioned global military preponderance. In terms of the sheer quantity of firepower at its disposal, the United States is and will remain for the foreseeable future the world's first-ranked military power. That said, it is nevertheless also true that the end of the cold war is hastening a worldwide diffusion of military capabilities that has already been underway for some time. This diffusion, when coupled with the ongoing reduction and retraction of American forces, will lead in some areas to a greater equalization in the balance of effective military power.

American military planners have already identified the most meaningful measure of post-cold war capability as the capacity of their forces to engage and defeat those of hostile regional powers.[7] While total U.S. resources will continue to be greater than those of any local opponent, the results of an actual military engagement would, of course, be determined by the forces that the two sides were willing and able to bring to bear against one another. Here, for a variety of reasons, the margin of American advantage over some potential enemies is likely to diminish in the years ahead.

Among the forces now being demobilized are some, like aircraft carriers, that would be necessary for purposes of power projection. Moreover, as the total size of the U.S. military shrinks, the fraction of remaining forces that would have to be committed to any future regional conflict will grow, and the willingness of the nation's political and military leaders to risk their engagement may diminish. In 1991, with its capabilities still at close to cold war levels, the United States was able to deploy overwhelming power against Iraq without serious concern for its continuing responsibilities in such other parts of the

[7] See, for example, the statement by General Colin Powell, chairman of the Joint Chiefs of Staff before the Subcommittee on Defense of the Senate Appropriations Committee (mimeo, 21 April 1993), 2.

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world as the Korean peninsula. By the turn of the century, a serious conflict with a powerful regional opponent will require something more nearly approaching a complete commitment of American capabilities. In the late 1960s the issue was whether to prepare for one and a half or two and a half wars, (that is, a major war with either China or Russia, or both together, along with a lesser conflict somewhere in the Third World). In the early 1990s U.S. planners eager to make still deeper cuts in defense spending debated the virtues of a one-half versus a two-half war force.

The ability of the United States to deploy and sustain large forces at great distances in its 1991 war with Iraq also depended critically on access to bases, communications facilities, and supply stockpiles in and around the Persian Gulf. Most of these were acquired as a direct result of the cold war. With its conclusion, changing alliance relationships and mounting domestic budgetary pressures are likely to result in the dismantlement of much, if not all, of this far-flung infrastructure. Even with substantial advances in communications and transportation technology, distance still matters in military affairs. The loss of facilities outside its home territory will steepen the power gradient facing the United States and make it that much more difficult for it to bring overwhelming force to bear at every corner of the globe.

As the absolute capacity of the United States to project power dwindles, the military capabilities of a number of states in the Middle East, Southwest, and Northeast Asia will continue to grow. This is a process that has been going on for some time, with countries like Libya, Israel, Saudi Arabia, Iran, Iraq, India, Pakistan, Taiwan, China, South and North Korea seeking over the past several decades both to import sophisticated weapons from their cold war allies and in many cases to acquire a greater indigenous capacity for their design and manufacture. The end of the cold war will serve to accelerate this long-term trend toward the diffusion of military capabilities. With their traditional enemies still in place but their former superpower patrons either gone or no longer as reliable as they once were, many countries will seek to enhance their capacity for self-defense. In this way the retraction of both Soviet and American power is likely to stimulate rather than dampen local arms races.

The collapse of communism in the East and the corresponding contraction of domestic arms markets in the West is also changing the character of the stream of military exports flowing from North to South. With military enterprises struggling to survive and governments

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desperate for hard currency, the variety and quality of the items available for sale from the former Soviet empire has already increased considerably, although as the export business has moved to a cash-only basis, the total volume of arms transfers has for the moment gone down. Many western arms manufacturers and governments, meanwhile, are looking to exports to keep assembly lines open and production costs down. In the resulting buyer's market, countries with the ability to pay cash for their purchases will have a better chance of obtaining the most sophisticated weapons and also the kinds of technology transfers and joint production agreements that will enable them eventually to build their own advanced armaments.[8]

Weapons aside, the relaxation of the U. S.-led cold war export control system, the general diffusion of scientific and engineering competence beyond the United States and its allies, and the increasing blurriness of the line separating military from civilian technologies will also combine to ease access worldwide to what might best be labeled strategically significant technologies. The ability of regional powers to scramble their communications with low cost encryption devices or to receive extremely precise navigational signals or reconnaissance imagery from overhead commercial satellites will further narrow the gap that presently separates the capabilities of their armed forces from those of the most advanced nations, including the United States.

Even if they cannot hope to match their American opponents missile for missile, plane for plane, and tank for tank, an increasing number of states will likely soon have access to weapons of mass destruction, the Great Equalizers of the late twentieth century. A nation armed with a small arsenal of deliverable nuclear weapons could not hope to survive, still less to win an all-out war with the United States. But by threatening to use such weapons against American power projection forces, regional allies, or home territory, even a lesser nuclear power might be able to deter the United States from acting against it. Certainly had Saddam Hussein been possessed of a working nuclear arsenal, the United States would have been far less willing to station half a million troops, a sizable fraction of its air forces, and a large naval armada within easy reach of his frontiers. In the near future, the

[8] For overviews, see Office of Technology Assessment, *Global Arms Trade: Commerce in Advanced Military Technology and Weapons*, OTA-ISC-460 (Washington, DC: U.S. GPO, 1991); Congressional Budget Office, *Limiting Conventional Arms Exports to the Middle East* (Washington, DC: CBO, September 1992); Keith Krause, *Arms and the State: Patterns of Military Production and Trade* (New York: Cambridge University Press, 1992).

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southern and eastern edges of Eurasia may be dotted with nuclear porcupines, nations that may not be capable of projecting their own power at great distances, but which outsiders will find difficult and dangerous to approach.

Structural Power

Even if the American share of various power resources (total global product, world nuclear stockpile, etc.) continues to decline, it does not follow that the American ability to control important events and processes will necessarily erode proportionately or even that it need deteriorate at all. Throughout the cold war the United States derived great influence from the fact that it was able largely to set the rules and organize the institutions through which so much of the world's economic and political business was transacted. In the 1980s Susan Strange argued persuasively that what she called America's "structural power" had persisted, indeed increased in some respects, even as its share of the world's stock of various traditional power resources diminished.[9] With the collapse of communism and the pending absorption of much of the East into the political and economic order of the West, the scope of American structural power seems set to grow, perhaps dramatically.

There can be no question that the United States played a decisive role in shaping the most important international institutions (defined broadly to include everything from formal organizations to less tangible regimes) put in place at the end of World War II. It is also true that to a very considerable degree, the construction of these institutions reflected American values, American interests, and, most important, American power. The United States was able to get others to accept the structures that it had devised largely, although by no means exclusively, because of its preponderance in economic and military resources. Once in place, these structures continued to operate in ways that benefited the United States, as well as its allies and trading partners.

[9] This argument is advanced in Susan Strange, "The Persistent Myth of Lost Hegemony," *International Organization* 41 (Autumn 1987): 551–74, and, at greater length, in Strange, *States and Markets* (London: Pinter, 1988). Strange defines structural power as "the power to shape and determine the structures of the global political economy" (*States and Markets*, 24), but the concept may also be applied more broadly to include the political as well as the economic arena. For a similar usage see Bruce Russett, "The Mysterious Case of Vanishing Hegemony; or, Is Mark Twain Really Dead?" *International Organization* 39 (Spring 1985): 207–31.

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American structural power is critically important in explaining the workings of the postwar world. But if the years immediately following 1945 marked the creation of a distinct new order, then it seems likely that the world is on the threshold of another founding, one in which different structures will be assembled that will then go on to shape the pattern of relations in the post-cold war world. Like their predecessors, these institutions will mirror the distribution of power resources existing at the moment of their creation. For this reason, the new pattern of structural power will be far less fully a manifestation of American values and concerns; and it is likely, therefore, to operate in ways less favorable to American interests than the one first established some forty-five years ago.

Looking first at institutions in the sense of formal organizations, many of the mechanisms through which the United States exerted influence during the cold war will wither in importance now that it is over, and some may cease to exist altogether. It is not obvious, for example, that the North Atlantic Treaty Organization can long outlive the enemy it was built to oppose. Continuous rhetoric and occasional symbolic gestures notwithstanding, NATO was from first to last an American-built and led organization. If it is involved at all, the United States will play a far less dominant role in any new arrangements for the maintenance of European security.

While they may maintain their outward appearance, some of the international organizations built up after World War II will undergo significant changes in their internal workings and hence in the pattern of their outward operations. These changes, too, will follow shifts in the distribution of power away from the earlier era of American preponderance. The granting of permanent membership on the United Nations Security Council to Japan and Germany would both reflect their increased capabilities in relation to the United States and by adding an important new structural dimension to their power would further enhance their comparative ability to exert influence. The enormous growth in the Japanese contribution to various international financial institutions certainly entitles them to a greater say in their management; but, here too, as the extent of Japan's structural power increases, the former dominance of the United States is bound to diminish.[10]

[10] For a discussion of the possible implications of these changes, see Jeffrey E. Garten, *A Cold Peace: America, Japan, Germany, and the Struggle for Supremacy* (New York: Times Books, 1992), 184–189. Among other things, increased Japanese influence in international lending institutions is

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Finally, the end of the cold war seems likely to accelerate the construction and consolidation of new, regionally focused economic, political, and military organizations in which the American role will be at best limited. The movement toward greater European integration and the elevated importance of the governing mechanisms of the European Community is the prime example of this tendency. The United States is presently encouraging the formation of multilateral organizations designed to enhance trans-Pacific economic cooperation and to promote East Asian security. But it cannot be said to be controlling either process; nor will it dominate the institutions that emerge as fully as those it planned, paid for, and built at the end of World War II.

Turning now to the less formal manifestations of its structural power, Susan Strange has argued that well into the 1980s the United States continued to have an extraordinary capacity "to choose and to shape the structures of the global political economy within which other states, their political institutions, their economic enterprises, and (not least) their professional people have to operate." This influence had its basis in, among other things, the ongoing American dominance of the systems through which production is organized and knowledge diffused.[11] Although these less tangible forms of structural power may prove more persistent than their more concrete counterparts, here too there is evidence of considerable, ongoing erosion.

Strange maintains that the true measure of American economic preponderance is not the share of goods and services produced within its borders, but the proportion produced "a) in the United States, and b) by enterprises ultimately headquartered in the United States and responsible to the government in Washington."[12] Because of their extensive investments in plants and facilities in foreign countries, U.S. firms and, by extension presumably, the U.S. government are able to exert a far greater influence over the world economy than might at first appear to be the case.

While they have sometimes been willing to do Washington's bidding, American multinational corporations have certainly not always been

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likely to mean a departure from American standards for appropriate economic and human rights policies on the part of potential aid recipients. See Paul Blustein, Steven Mufson, et al., "Japan Seeks to Redefine Aid Policy," *Washington Post*, 27 April 1992.

[11] Strange, "The Persistent Myth of Lost Hegemony," 565–571. The two other interrelated elements of structural power to which Strange refers are "power in the security structure" and in "the ability to control the supply and availability of credit."

[12] Ibid., 566–567.

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the faithful overseas executors of official policy. Indeed, as one recent study demonstrates, the ability of the U.S. government to impose its will on the overseas subsidiaries of American corporations has declined considerably since the 1960s.[13] With the disintegration of Soviet communism, government officials have largely lost the national security rationale that provided them with a powerful source of leverage over the offshore activities of self-interested corporations. Indeed, compared to some of its more dirigiste competitors, the post-cold war American state, with its free market ideology and porous political structure, is likely to be particularly ill equipped to control the behavior of American-owned businesses overseas.

Corporate power does not necessarily translate smoothly and easily into national political power. In any case, the degree of one-sided American dominance of the world's productive structure has diminished in recent years. Beginning in the mid-1980s the flow of foreign direct investment into the United States increased dramatically. If the foreign-based affiliates of American corporations are ultimately responsible to the U.S. government, then it seems only reasonable to assume that the American-based affiliates of foreign firms owe similar allegiance to their home countries. A greater equality in investment flows should therefore offset some of the previous structural advantages enjoyed by the United States.[14] Where the firms of one particular country invest more in the United States than American companies invest in it, that country may actually hold something of a bilateral edge in this particular form of structural power.[15]

In addition to being itself penetrated by foreign investment, the United States is now also no longer so clearly the dominant external investor, either globally or in many important regions of the world. Between the mid-1970s and the early 1990s the United States went from supplying almost half of the total foreign direct investment flowing out from the most industrialized countries to accounting for only around one-sixth.[16] Whereas in 1970 fully half of the world's 7,000 multina-

[13] Steven Kobrin, "Enforcing Export Embargoes Through Multinational Corporations: Why Doesn't It Work Anymore?" *Business in the Contemporary World* 1 (Winter 1989): 31-42.

[14] For data through the late 1980s, see Edward M. Graham and Paul R. Krugman, *Foreign Direct Investment in the United States* (Washington, DC: Institute for International Economics, 1989), 1-44.

[15] Certainly, since the early 1980s, the flow of Japanese foreign direct investment into the United States has far exceeded that of American firms in Japan. For figures see Dennis Encarnation, *Rivals Beyond Trade: American Versus Japan in Global Competition* (Ithaca, NY: Cornell University Press, 1992), 150.

[16] See the table in "Another World," *The Economist*, 19 September 1992, 14.

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tionals were American or British, twenty years later the United States, Japan, Germany, and Switzerland together provided a base of operations for half of an expanded total of 35,000 multinational firms.[17] In East Asia, Japanese foreign direct investment flows are now considerably larger than those of their U.S. competitors.[18] Within Western Europe, an increasing fraction of inward investment comes from other European countries.[19] Japanese companies are rapidly expanding their investments in parts of Central and Latin America,[20] and it is European, rather than American, firms that are leading the way in investing in many parts of the former Soviet empire.

U.S. dominance of what Strange calls the "knowledge structure" is also no longer what it once was. Over the past thirty years, other advanced countries have been increasing their expenditures on scientific research and development at almost twice the pace of the United States.[21] The cumulative impact of this trend (arguably heightened by the fact that a sizable portion of American R&D has been devoted to military rather than commercial ends) has come to be reflected in a variety of quantitative and qualitative measures. In 1981, of the top fifteen corporate patent recipients in the United States, eight were American-owned firms and only two were Japanese; ten years later those figures stood at five and six respectively.[22] In 1991, of fifteen companies with the fastest technology cycle times (a measure of the speed with which firms introduce innovations), all but one were Japanese. In the same year, Japanese companies were the leading recipients of U.S. patents in four of thirteen high technology sectors.[23] Since the early 1970s, the U.S. share of world high-technology exports has decreased somewhat,[24] and the trend in a variety of specific sectors appears to be even more marked. Commerce Department experts estimated that U.S. firms in the early 1990s were losing ground to their

[17] Bill Emmott, "Multinationals: Back in Fashion," *The Economist*, 27 March 1993.

[18] Encarnation, *Rivals Beyond Trade*, 150.

[19] "The Non-Global Firm," *The Economist*, 27 March 1993.

[20] See, for example, Nathaniel Nash, "Chile: Japan's Backdoor to the West," *New York Times*, 15 April 1993.

[21] For an overview of the trends see John Alic et al., *Beyond Spinoff* (Cambridge, MA: Harvard Business School Press, 1992), 87–132.

[22] Jeff Nesmith and Elliot Jaspin, "Ingenuity Becoming Japanese Buzzword: Americans Out-Invented for High-Tech Patents," *The Cleveland Plain Dealer*, 21 February 1993.

[23] "Global Innovation: Who's In the Lead?," *Business Week*, 3 August 1992, 68–73.

[24] From just under 30 percent in 1970–1973 to just over 20 percent in 1988–1989. Laura D'Andrea Tyson, *Who's Bashing Whom?: Trade Conflict in High-Technology Industries* (Washington, DC: Institute for International Economics, 1992), 22.

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Japanese competitors in five of twelve important emerging technologies (advanced materials, biotechnology, digital imaging, sensors, and superconductors) and to the Europeans in one more (flexible manufacturing). In terms of the introduction of new products, as compared to new ideas, the situation looks even less promising. Even in four other areas where U.S. companies may continue for a time to hold their own in research (advanced semiconductors, data storage, high speed computing, and optoelectronics), Japanese firms are likely to do better in commercializing new technologies.[25]

This last point is important both for what it portends for the future shape of the global knowledge structure and for what it reveals about the essential character of the American system. Because commercial success means more money for research, an edge in production can lead eventually to advantages in innovation. It is unlikely that the United States will be able to continue indefinitely as the world's leading source of new ideas if it does not also increase its capacity for turning some number of them to its economic benefit.[26] In the long run, Nobel prizes may be less important than high-tech trade statistics, or rather trade statistics may be a leading indicator of Nobel prizes.

Ironically, America's very creativity and openness is one factor that has contributed to the speed of its relative economic decline. By making it so easy for others to study and invest within its frontiers, the United States has eased the outward flow of innovations first developed in American universities and laboratories. A country less committed to the unrestricted movement of people and ideas would be less free and less appealing, but also (and partly as a result) better equipped to husband its lead over rising competitors. The next technological hegemon may well try to pursue more restrictive policies.

Soft Power

It has been suggested that the ultimate source of America's influence in the world is not the size of its economy, the might of its military, or its control of important international institutions, but rather the

[25] See Department of Commerce, *Emerging Technologies: A Survey of Technical and Economic Opportunities* (Washington, DC: National Technical Information Service, 1990), 13.

[26] On this point, see Harvey Brooks, "Technology as a Factor in U.S. Competitiveness" in Bruce R. Scott and George C. Lodge, eds., *U.S. Competitiveness in the World Economy* (Boston: Harvard Business School Press, 1985), 32; also Office of Technology Assessment, *Making Things Better: Competing in Manufacturing*, OTA-ITE-443 (Washington, DC: U.S. GPO, 1990).

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appeal of what it represents, the seemingly universal attraction exerted by its culture and ideology. Advances in communications technology are speeding the spread of America's message to every corner of the globe. And each country that adopts capitalism and democracy as a result will further amplify the power of the American example. It is at the level of ideas, finally, that the United States most decisively won the cold war, and it is here too that some observers believe it will win the peace that follows.[27]

The reach and resonance of American popular culture are undeniable, even if its precise political significance is often difficult to discern. Iranian militants may drink soft drinks and wear track suits first made popular in America, but this hardly means that they love the United States, still less that they embrace the policies of its government. The rapid growth of a global market for American cultural products made possible by rising incomes and improved technologies seems also to be exerting a homogenizing feedback effect on the creative process. With a sizable portion of potential profits to be made overseas, many American movies are now produced with an eye on the foreign audience and often with the help of foreign investors. Such films, as one critic puts it, "might as well come from the moon or the Cayman Islands" as from Hollywood.[28] Increased foreign investment in U.S. movie and recording studios seems likely to accelerate this tendency and to render their products less uniquely American. In both Europe and Asia there is also evidence that growing economic and technological integration is being accompanied by an intensified interest in creating a modern popular culture with a more distinctly regional flavor. In all, globalization appears to be leading not to a strengthening of America's importance as a producer of popular culture, but to a dilution of its prior dominance.[29]

[27] For variations on these themes see Russett, "Vanishing Hegemony," 228–30; Francis Fukuyama, "The End of History?" *National Interest* 16 (Summer 1989): 3–18; Nye, *Bound to Lead*, 193–5; Henry R. Nau, *The Myth of America's Decline: Leading the World Economy into the 1990s* (New York: Oxford University Press, 1990).

[28] Todd Gitlin, "World Leaders: Mickey, et al.," *New York Times*, 3 May 1992.

[29] In the television industry, for example, where at one time "all roads led straight to Hollywood . . . now those routes veer off to London, Paris, Milan, Madrid and Munich." See Mark Shapiro, "Lust-Greed-Sex-Power. Translatable Anywhere," *New York Times*, 2 June 1991. Something similar seems to be happening in the extraordinarily lucrative popular music business. See William E. Schmidt, "In Europe, America's Grip on Pop Culture is Fading," *New York Times*, 23 March 1993. Also see Teresa Watanabe, "Toward a New Asian Order. Culture: In the East, Pop Audience Gets Icons of Its Own," *Los Angeles Times*, 19 May 1992.

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It is worth recalling finally that as the volume of images of American life transmitted around the world grows, so too does the number that are mixed or negative. The same satellites that beam each breathlessly awaited episode of *Dallas* or *Beverly Hills 90210* into untold millions of households also carry live, uncensored coverage of urban riots and self-immolating religious cults. The American penchant for national self-absorption and self-congratulation goes hand-in-hand with a remarkable taste for self-exposure and self-criticism. The pictures that linger longest in the minds of external observers will not always be those that are the most flattering.

Certainly the most important trend of the late twentieth century is the apparent convergence in many parts of the world on the norms of political democratization and economic liberalization. These are principles for which the United States has long been the most outspoken advocate. It does not seem unreasonable, therefore, to expect that their growing acceptance should result in a substantial enhancement of American power. The fact that an increasing portion of the world's leaders and people are now on the same wave length as their counterparts in the United States may mean that they will be more receptive to its guidance. Indeed, writes one political scientist, because its "purposes are more widely shared in the world today . . . America does not need as much power as it did 20 or 40 years ago. It can maintain its leadership by being more of a global pope than a global power."[30]

As appealing as this vision of low-cost leadership of a like-minded world undoubtedly is to many Americans, there are several reasons to regard it with skepticism. There is, first of all, the question of whether democracy and capitalism will ultimately flourish in all of the places where they have recently set down roots. The history of past waves of democratization suggests that there will eventually be some measure of recession, leaving a net gain in the number of democratic states, but one not as large as appeared possible at the moment when the tide was running at its fullest.[31] The failure of democracy and capitalism quickly to solve the problems of ordinary people will inevitably lead in some places to an upsurge of anti-Western and specifically anti-American feeling. Having finally tasted the forbidden fruit of

[30] Nau, *The Myth of America's Decline*, 11.

[31] On this process, see Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1992).

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freedom and finding it less sweet than advertised, residents of some parts of the former Soviet empire may soon be much less impressed by the American example than they were during the cold war.[32]

The extent to which democracy and capitalism will eventually spread has yet to be determined. In some parts of the less developed world (especially those dominated by Islam) the recent defeat of the Soviet Union may actually increase the feeling that western values and institutions represent the greatest threat to local autonomy. During the cold war it may have been necessary to resist the depredations of both godless communism and secular capitalism, but there were also opportunities to play one off against the other. If there was previously any doubt, the United States has now emerged as the single, unchallenged "Great Satan" against whom all ideological energies must be mobilized.

Even those societies that do turn increasingly toward democracy and capitalism will not necessarily embrace the American variants of those general forms. Indeed, given its long-standing social problems and its more recent difficulties in international economic competition, some observers are likely to see the United States not as a role model, but as an illustration of how not to organize important aspects of societal life. In Asia and other parts of the developing world there is growing interest in a Japanese, Korean, or even a Chinese model for economic and political development—one that places more emphasis on stability than freedom, stresses group responsibilities over individual rights, and assigns a substantial role to the state in "governing the market."[33] Systems built on such principles may be capitalist democracies by some definition of those words, but they will be very different from the United States and they are unlikely to look to it as their pope.

Political Power

In one sense, American power can be thought of as merely the product of all of the various elements discussed thus far. But national political power is more than just the sum of these disparate parts; it involves also an intangible, dual-edged element of will. Whatever the objective

[32] On this possibility see Zbigniew Brzezinski, *Out of Control: Global Turmoil on the Eve of the 21st Century* (New York: Scribners, 1993), 167–81.

[33] See Clayton Jones, "Japan Seems Pleased With Signs of Activist U.S. Economic Policy," *Christian Science Monitor*, 10 March 1993; also see Robert Wade, *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (Princeton, NJ: Princeton University Press, 1990).

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capabilities of the United States, it may lack the willingness to apply them toward any coherent purpose. Even if it attempts to do so, it may find that others are unwilling to follow its lead and that they can be compelled to do so, if at all, only at considerable cost.[34] In either case, the real political power of the United States would be significantly less than it might appear.

Some observers have argued that, even if its relative power has declined in certain ways, the United States nevertheless remains the most powerful state in the international system and is therefore "bound to lead."[35] Needless to say, such assertions represent expressions of a particular set of preferences rather than any ironclad prediction about the future. What may arguably be necessary will not always be possible. Especially in a democracy, the gap between the policies that some members of the elite believe to be essential to the promotion of the nation's interests and those that the public is willing to support can, if sufficiently wide, be decisive.

In the aftermath of the cold war, America's willingness to lead has declined sharply. The inward-turning impulse that determined the outcome of the 1992 presidential campaign was in part the product of short-term considerations, a certain psychological exhaustion following the triumphant end of the cold war and the somewhat less stirring termination of hostilities in the Persian Gulf, coupled with the effects of a lingering economic recession. But that inclination also feeds from deeper sources, and there are reasons to believe that it is more likely to intensify than to dissipate. The growing awareness of problems at home and the desire for domestic rejuvenation reflect a recurring pattern in American politics that is driven and sustained in part by generational change.[36] Although the election of an unusually young president in Bill Clinton has accelerated the process, the chances are good that the next twenty years or so of American politics will be dominated by figures whose views were shaped by the events of the 1960s and 1970s (the civil rights movement and Vietnam) rather than the 1940s and 1950s (World War II and the opening phase of the cold war). Such people are likely to be more skeptical of foreign entanglements and more concerned with and optimistic about the prospects

[34] On the importance of followership, see Andrew Fenton Cooper, Richard A. Higgott, and Kim Richard Nossal, "Bound to Follow? Leadership and Followership in the Gulf Conflict," *Political Science Quarterly* 106 (Fall 1991): 391–410.

[35] This, of course, is both the title and the essential argument of Joseph Nye's book.

[36] See Arthur Schlesinger, Jr., *The Cycles of American History* (Boston: Houghton Mifflin, 1986).

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for domestic reform than those who went before them or those who come after.

Some measure of disengagement would also be in keeping with the larger pattern of American involvement in world affairs. This does not mean that the United States is necessarily on the verge of a new era of isolationism. The received image of total American withdrawal in the 1920s and 1930s is, in any case, exaggerated. But it is worth recalling that for most of the past century an active, extensive, and continuous U.S. role has been motivated and justified by the existence of a perceived threat to the nation's survival. It is not yet clear what, if anything, can take the place of resistance to such a menace as the organizing principle around which to build the nation's foreign and defense policies. Appeals to bloodless abstractions such as the inevitability of interdependence or the importance of supporting international institutions may not hold the attention of the many, however much they excite the imaginations of the few.

The U.S. postwar posture was built on global economic preponderance and, through the 1960s, vigorous domestic growth. Taken together, these allowed Americans both to feel generous toward and superior to their less well-to-do allies and to bear the burdens of their world role without any undue strain. Growing anxiety about relative economic decline has already eroded the sense that the United States has a unique capacity and responsibility for global leadership. If the previous discussion of the prospects for American economic power is accurate, such feelings will not diminish substantially in the years ahead. On a more practical level, the present budgetary bind is sufficiently tight that it will continue to constrict spending for external purposes, including defense and foreign assistance, until the end of this century, if not beyond. While the current mood of introversion could change, absent some catastrophe it seems likely that the American recessional is closer to its beginning than to its end.

Ironically, as the willingness of the United States to supply leadership diminishes, the demand from others that it do so may increase, at least in the short run. This is a result, not only of the crises of the moment, but of a generalized uncertainty about what the future will hold, coupled with a growing realization that at long last the Americans may finally be going home. The old cold war debates over diplomacy, burden sharing, alliance military strategy, and export controls quickly developed a stylized quality like the recurrent squabbles of an essentially stable family. Americans felt free to complain about allied irre-

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sponsibility and shiftlessness; and the allies for their part did not hesitate to criticize the United States for being overbearing and reckless. But both sides knew that in the end they were stuck with one another. Now the future of their mutual relationship is much less certain, and the balance of bargaining power between the parties has begun to shift. A radical change in existing arrangements would impose heavier burdens on America's allies, even as it promised to lighten the load borne by the United States. It is because they would prefer not to assume these burdens, at least for the moment, that others may be especially attentive to American concerns and receptive to American leadership.

This situation is unlikely to last. On the one hand, American foot-dragging and buck-passing will push its former allies to assume more responsibility for themselves. On the other, an effort on the part of the United States to maintain its dominance by driving hard new bargains and passing off to others a far greater percentage of the cost of existing arrangements will eventually have the same effect. Over time, both in Europe and in Asia, the United States and its old allies will increasingly go their separate ways. In the absence of a unifying common threat, more independent diplomatic and military policies seem inevitable and divergent economic policies far more likely. This does not mean that the United States and its former allies will not continue to consult and to cooperate on many issues, still less that they will become enemies. But the coalition of which they were a part is rapidly dissolving, and with it will go much of the influence that the United States once derived from its position as coalition leader.

Implications and Conclusions

What has been described thus far is a more plural world, one in which the United States will continue to be *primus inter pares* but in which, in many important respects, its relative power will decline at an accelerated pace. In terms of its raw economic capabilities, the position of the United States in relation to Japan and eventually China is likely to erode still further. In the military realm, the balance of effective capabilities between the United States and a number of growing regional powers (including, perhaps, Iran, India, and China) will shift from the center toward the periphery. Some of America's structural power will flow to other nations; some (and some of its soft power as well) will find its way into the hands of nonstate actors like multina-

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tional corporations. And, assuming that no other country takes on an equivalent leadership role, much of what the United States gives up in the way of political power will simply be dissipated.

What will be the implications of these changes in the distribution of power for the legitimacy and stability of the international system? Legitimate orders, whether domestic or international, are stable because most of the participants, most of the time, accept the principles on which they are based and the rules, procedures, and institutions through which they operate. Systems in which power is distributed in very different ways can enjoy equivalent measures of legitimacy and stability. Equality among members and a say for all in the creation of the system's norms and institutions can promote their acceptance and enhance stability, but hierarchical systems in which some are willing to accept subordinate roles can also be both legitimate and stable. Changes in the distribution of power, on the other hand, are almost certain to give rise to disputes over the legitimacy of existing arrangements and hence to at least a temporary reduction in stability. This is most dramatically the case when a formerly hegemonic power is challenged for preeminence by a single rising state. Then, writes Robert Gilpin, "the legitimacy of the system may be said to be challenged" and an unrestrained struggle for dominance will typically result.[37]

The trends described here are less stark, and their consequences will almost certainly be less cataclysmic. America's decline in most categories of capability is relative rather than absolute. Perhaps even more important, the United States is not being challenged in all areas simultaneously by a single rising competitor. The diffusion of power throughout the international system is therefore likely to result, not in a single, epic convulsion, followed by the rapid consolidation of a new order, but rather in a period of many, simultaneous, lower-level disputes over existing institutions and practices. This interval of declining legitimacy and increasing instability is already well under way, and given the nature of the changes that underlie it, there is reason to expect that it will persist for some time. The United States no longer has the capacity single-handedly to create a new world order, but neither does anyone else.

If it is to emerge at all, a new global order will have to grow out of a process of interstate bargaining and enlightened compromise.

[37] Robert Gilpin, *War and Change in World Politics* (New York: Cambridge University Press, 1981), 199.

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Optimists believe that this process will be eased by a global convergence on liberal, democratic, capitalist norms. It is possible to imagine a new international system made up of similarly organized states that would enjoy a far greater degree of legitimacy and a higher measure of stability than the old order. But for reasons that have already been suggested, this is not the only nor necessarily the most plausible scenario. Convergence remains a projection and an hypothesis rather than an accomplished fact, and cooperation in the post-cold war world is turning out to be an illusive goal, even among states that appear already to have a great deal in common.

There is no law of nature that requires the pieces of the old system to resolve themselves into a single, all-encompassing whole. Indeed, given the fragmented foundation of power on which a new order will have to be built, what seems more likely is the gradual emergence of several subsystems. These might be organized regionally (Asia, Europe, America); on the basis of wealth (North vs. South); or perhaps along civilizational lines (Western, Confucian, Japanese, Hindu, Slavic-Orthodox, Islamic).[38] Each subsystem might enjoy a degree of internal legitimacy and stability, but the relations between them could well be fraught with conflict. The liberal dream of one world seems as distant at the close of the cold war as it did at the beginning.*

[38] See Samuel P. Huntington, "The Clash of Civilizations?" *Foreign Affairs* 72 (Summer 1993): 22–49.

*An earlier version of this paper was presented to a Nobel Symposium held in Tromso, Noway, 1–4 August 1993 and will be published in Geir Lundestad, ed., *The Fall of Great Powers: Peace, Stability, and Legitimacy*.

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A Democratic Dilemma: System Effectiveness versus Citizen Participation

ROBERT A. DAHL

The unexpected rise in opposition to the Maastricht Treaty in 1992 reflected in part an abrupt heightening of awareness about possible trade-offs that the designers and supporters of the treaty had largely ignored. The treaty was intended to create in due time a common currency among the twelve members of the European Union (EU), common policies on defense and foreign affairs, and greater authority for the EU over many of the policies—social, economic, and environmental—of the member states. (Before Maastricht the EU had been called the European Community.) Increasing references to the democratic deficit in the political arrangements of the EU revealed a concern that whatever other benefits might result from the treaty, they could come at the cost of submerging a national democratic government into a larger and less democratic transnational system.

Maastricht presented citizens and leaders (in a country like Denmark, for example) with a fundamental democratic dilemma: They could choose to preserve the authority of a smaller democratic political unit (Denmark) within which they could act more effectively to influence the conduct of their government, even though some important matters

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might remain beyond the capacity of that government to deal with effectively. Or they could choose to increase the capacity of a large political unit to deal more effectively with these matters, even if their ability to influence the government in a democratic fashion were significantly less in the larger unit (the EU) than in the smaller unit (Denmark).

The dilemma transcends Maastricht and the EU. It exists wherever and whenever the societies and economies within democratic states are subject to significant external influences beyond their control. It has, therefore, existed ever since the idea and practice of democracy evolved in ancient Greece 2,500 years ago.

External actions beyond the capacity of a particular state to control can, of course, result from deliberate decisions like Maastricht, but they can also result from developments that are not necessarily intended to limit that state's autonomy. Whenever economic life extends beyond a state's boundaries, for example, internal choices are limited by actions taken outside the country. Military and strategic choices have always been constrained by decisions, or expectations about decisions, made by external actors. Although economic and strategic limits are ancient, only recently have many people realized that actions having decisive consequences for a country's environment cannot be controlled exclusively by people within that country. Even the capacity to control immigration has begun to slip away from the sovereign control of nation-states.

Transnational actions affect all democratic countries in varying degrees. In general, decisions in small democracies like Denmark are more constrained by external forces than in large countries, if only because their economies (in advanced countries like Denmark, at any rate) are more dependent on international trade; and ordinarily, too, they are strategically more vulnerable (Switzerland being an exception only in part). Yet is is obvious that external actors and actions impose crucial limits on the choices available even to the people of a large and powerful country like the United States. Indeed, these limits may be particularly painful for Americans because of the rather swift change in the country's international economic position from relatively high autonomy earlier in this century to much greater interdependence as the century comes to a close. Only thirty years ago, for example, officials in charge of fiscal and monetary policy, and their official and unofficial advisers, could reflect on the possibility of employing orthodox Keynesian remedies for a recession, such as reducing interest rates and increasing federal spending, without giving a great deal of weight to the responses of foreign investors. It is hard to imagine them doing so today.

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Historical Transformations in Democracy

Because historical changes in the nature of democratic institutions have a poignant bearing on the dilemma I just suggested, a word about them may be helpful. The history of democracy can be viewed as consisting of three great transformations. The first occurred during the first half of the fifth century B.C. in Greece: the transformation of nondemocratic city-states—typically aristocracies, oligarchies, monarchies, or mixtures of all three—into democracies. For the next two thousand years, the idea and practice of democracy were associated almost exclusively with small scale city-states, reappearing in the late middle ages in some of the city-states of Italy.[1] In the small compass of the city-state, the central institution was the assembly in which all citizens were entitled to participate.

But the city-state was made obsolete by the emergence of the large scale nation-state, or more accurately the national state.[2] At this point our story begins to suggest an analogy with the present. For in a second democratic transformation the idea of democracy was transferred from the city-state to the much larger scale of the national state. While some city-state republics lingered on, increasingly the autonomy that cities might once have possessed was curtailed as they became subordinate units of national states. What made the second transformation possible was an idea and set of practice we now tend to regard as essential to democracy—representation. Democracy came to be understood not as assembly democracy in the city-state but as representative democracy in the national-state. As a consequence of that transformation in scale and form, a set of political institutions and practices, which taken as a whole were unknown to the theory and practice of democracy up to that time, came into existence.

By the late twentieth century, this set of political institutions, which are generally seen as necessary to democracy (though not sufficient) on the large scale of a country, have become very familiar: control over government decisions about policy is constitutionally vested in elected officials; elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon;

[1] Rome might also be cited as part of this trend. Throughout the period of the Republic, the Roman institutions for citizen participation in government largely remained those of the city-state. Despite the vastly enlarged scale of Rome, Romans never adopted a system of representative government in the modern sense.

[2] It would be even more accurate, perhaps, to speak of country-states but the term is unfamiliar and national state will probably do better.

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practically all adults have the right to vote in the election of officials and have the right to run for elective offices in the government; citizens have an effectively enforceable right to express themselves on political matters broadly defined, without danger of severe punishment; they also have effective rights to seek out alternative sources of information and to form relatively independent associations or organizations, including independent political parties and interest groups.[3]

Although an Athenian in classical Greece would hardly have accepted this constellation of institutions as a democracy—and modern day advocates of assembly democracy often do not—we need not be detained by these linguistic, philosophical, and ideological disputes. For our concern here is with the effects of transnational economic, social, and political systems on modern democracy as we, if not the Greeks of classical times, conceive it.

The Present Transformation

The third transformation, then, is the one now taking place. Just as earlier city-states lost much of their political, economic, social, and cultural autonomy when they were absorbed into larger national states, so in our time the development of transnational systems reduces the political, economic, social, and cultural autonomy of national states.[4]

The boundaries of a country, even one as large as the United States, have become much smaller than the boundaries of the decisions that significantly affect the fundamental interests of its citizens. A country's economic life, physical environment, national security, and survival are highly and probably increasingly dependent on actors and actions that are outside the country's boundaries and not directly subject to its government. Thus the citizens of a country cannot employ their national government, and much less their local governments, to exercise direct control over external actors whose decisions bear critically on their lives—for example, foreign investors who choose to invest their money elsewhere. The result is something like the second transfor-

[3] I have used the term *polyarchy* to differentiate the institutional complex of modern democracy, not only from assembly democracy and other possible institutional arrangements but also from democracy in the ideal sense. Instead, I usually rely here on the reader to grasp from the context which of the multiple meanings of democracy I have in mind.

[4] David Held examines some of the consequences of internationalization for democracy and provides an extensive account of the limits on the sovereignty of nation-states resulting from the world economy, international organizations, international law, and hegemonic powers and power blocs. See "Democracy, the Nation-State, and the Global System" in Held, ed., *Political Theory Today* (Stanford, CA: Stanford University Press, 1991), 197-235.

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mation writ large on a world scale. Just as the rise of the national state reduced the capacity of local residents to exercise control over matters of vital importance to them by means of their local governments, so the proliferation of transnational activities and decisions reduces the capacity of the citizens of a country to exercise control over matters vitally important to them by means of their national government. To that extent, the governments of countries are becoming local governments.

Is democracy in the national state, then, destined to meet the fate of democracy in the city-state? Will it grow more and more attenuated until finally it lingers on as little more than a ghostly reminder of its earlier vigorous existence? In the same way that the idea and practice of democracy were shifted away from the city-state to the larger scale of the national state, will democracy as an idea and a set of practices now shift to the grander scale of transnational governments? If so, just as democracy on the scale of the national state required a new and unique historical pattern of political institutions radically different from the ancient practices of assembly democracy that the small scale of the city-state made possible, desirable, and even self-evident, will democracy on a transnational scale require a new set of institutions that are different in some respects, perhaps radically different from the familiar political institutions of modern representative democracy?

Consequences for Democracy

I do not propose to say much here about what those new supranational political institutions might be.[5] We can be reasonably certain, however, about two things. First, they will be of enormous variety, from associations like the United Nations and the European Union to military arrangements like NATO or its successors, economic associations like the emergent North American economic area, and innumerable ad hoc but enduring arrangements for economic, military, environmental, and other matters. To be sure, the constitutional and political systems of democratic countries also vary greatly; but all, by definition and in empirical reality, are similar in having the basic set of political institutions I mentioned earlier. Second, they will require considerable delegation of power to make consequential decisions—de facto if not always de jure—to officials who are not themselves directly subject to elections, though at least nominally they may be subject to officials who are.

[5] Held offers some brief speculations in ibid., 231–234.

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Like the second transformation, then, the third is associated with a great increase in the scale of the political system. And as with the second, this third change in scale will have important consequences for certain values. As I have already suggested, the two that compose the dilemma under discussion here are the ability of the citizens to exercise democratic control over the decisions of the polity versus the capacity of the system to respond satisfactorily to the collective preferences of its citizens.

A persuasive argument to classical Greeks as well as to many modern democrats is that smaller systems at least hold out the theoretical potential for greater citizen effectiveness than larger systems, even if in practice that potentiality is not always realized. Judged from this perspective, as a site for democracy the city-state was clearly superior to the national state, at any rate in its potentials. Judged from the perspective of system capacity, however, the city-state had some obvious disadvantages, notably in defense but conspicuously also in economic capacities. The parochial and even passionate attachment of Greeks to their city-states meant that they could unite against aggressors, if at all, only when the aggressor was on their doorstep. Heroic though they were, they could not prevent subjugation by the Macedonians and Romans and destruction of the precious autonomy of their cities. Nor could the Italian republics adequately defend themselves against the superior forces of national states like France and Spain. For one example, take Venice. When Napoleon reached Italy in 1797, his forces overwhelmingly outnumbered those of Venice, which surrendered without resistance. Napoleon then further dramatized the obsolescence of the city-state by unceremoniously handing over the ancient republic to Austria.

That larger political systems often possess relatively greater capacity to accomplish tasks beyond the capacity of smaller systems leads sometimes to a paradox. In very small political systems a citizen may be able to participate extensively in decisions that do not matter much but cannot participate much in decisions that really matter a great deal; whereas very large systems may be able to cope with problems that matter more to a citizen, the opportunities for the citizen to participate in and greatly influence decisions are vastly reduced. Taken to an extreme but perhaps not wholly fanciful limit, the paradox would pose a choice between a tiny unit in which citizens could exercise perfect democratic control over, say, the location and upkeep of footpaths; or a world government necessary for preserving life on the planet by preventing acute environmental degradation, but over which citizens had only symbolic democratic control.

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Judgments about trade-offs are no easy matter. On balance, few people today would regret that our predecessors gave up the potentialities of democracy in smaller city-states for the enhanced system capacity of the national state. Our successors may one day conclude that on balance it was worthwhile to trade off the potentials for democracy in countries and national states for the enhanced capacity of supranational associations. I do not need to make these judgments here. I need only observe that just as the inclusion of a village, town, or city in the economy, society, and polity of a country reduces the relative importance of strictly local decisions and increases the relative importance of decisions made outside the smaller unit, so too as a country becomes more and more a part of a vaster social, economic, cultural, and political world, the ability of citizens to make their own decisions autonomously is diminished.

We can examine the matter more concretely by considering the effects of internationalization on the potentialities of a country for approximating several of the criteria we might use to assess democratic performance. I have already stressed the extent to which internationalization means that many crucial decisions are made by persons outside a country, without the political participation of citizens within the country, or at most perhaps only a tiny minority. This exclusion from participation, it might be objected, comes about because of the absence (or weakness) of transnational political institutions. If these were created along democratic lines then citizens could participate in transnational decisions just as they now can in national decisions. I shall ignore the fact that such institutions do not now exist and seem exceedingly remote in most of the world; even if they were to come about the opportunities and importance of participation would still be greatly diminished.

While Jean Jacques Rousseau was wrong, I think, about some important issues, he was on target in emphasizing that the opportunities for (and importance of) citizen participation decrease with the number of citizens. To oversimplify, if citizens were truly equal in influence, then the influence of an average citizen would necessarily shrink as the number of citizens increased from a hundred to a thousand; from a thousand to a hundred thousand; and so on. Or if we take theoretical opportunities to participate at any stage in a decision process—for example, by engaging in discussion with all other citizens or for that matter with one's representative in the parliament—then clearly these shrink linearly with numbers. A simple arithmetical exercise would demonstrate how the amount of time for each citizen to engage in

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discussion rapidly approaches insignificance as the number of persons who participate increases. Thus even if transnational democratic institutions are created, they cannot overcome the limitations imposed by scale and time.

Turn now to the matter of equality in voting at the decisive stage of collective decisions, as for example in elections. In the absence of supranational political institutions constructed more or less according to democratic principles, the criterion is essentially irrelevant. But even if nominally democratic political institutions are created (as in the European Union), they are likely to violate the principle even more extensively than decision making at the national level in democratic countries. For example, federal systems typically, perhaps invariably, violate the criterion of voting equality, because representation in parliament (or in one house) is not proportional to population or citizens, but on the contrary gives disproportionate weight to states, provinces, or regions with smaller populations. (Nevada and California both have two senators, for example.) I presume that international political institutions, formal and informal, would tend to follow the same principle, though perhaps not to the extreme of one country-one vote, as in the UN General Assembly.

If we take political realities into account, as we must, then just as the realities imposed by political life and institutions profoundly limit the extent to which the criterion of voting equality is actually met even in democratic countries, so too these realities will attenuate the principle in international life, but, I believe, to an even greater extent. As one illustration among many, in a democratic country the mere fact of representation means in practice that the personal preferences of a representative will almost inevitably carry far more weight than those of an average citizen; and we know how greatly all the additional influences brought to bear on a representative tend to violate the criterion of voting equality even further. But if this is true in democratic countries, does not, and will not, internationalization cause even more massive violations?

Consider enlightened understanding. In introducing this rather ambiguous criterion I simply want to recognize that democracy cannot be justified merely as a system for translating the raw, uninformed will of a popular majority into public policy. It is foolish and historically false to suppose that enlightenment has nothing to do with democracy. It is foolish because democracy has usually been conceived as a system in which "rule by the people" makes it more likely that the

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"people" will get what they want, or what they believe is best, rather than alternative systems in which an elite determines what is best. But to know what they want or what is best the people must be enlightened, at least to some degree. Because advocates of democracy have invariably recognized this, they have also placed great stress on the means to an informed and enlightened citizenry, such as education, discussion, and public deliberation.

What the criterion is intended to require, then, is that alternative procedures for making decisions ought to be evaluated according to the opportunities they furnish citizens for acquiring an understanding of means and ends, of one's interests and the expected consequences of policies for interests, not only for oneself but for all other relevant persons as well. Thus the criterion makes it hard to justify procedures that would cut off or suppress information which, were it available, might well cause citizens to arrive at a different decision; or that would give some citizens much easier access than others to information of crucial importance; or that would present citizens with an agenda of decisions that had to be decided without discussion; and so on.

Here again, the absence of transnational political systems constructed on democratic principles makes the criterion virtually irrelevant to the international decisions and actions that nowadays, and probably increasingly, bear heavily on the lives of citizens in democratic countries. Even if attempts were made to create transnational "democratic" systems, the burdens of information, knowledge, and understanding they would place on their citizens would, I believe, far exceed those of national democratic systems—which, heaven knows, impose burdens that may already be excessive.

Likewise, if the weakness of citizens in exercising final control of the agenda of collective decision making is already a problem of the utmost seriousness in all democratic countries, then surely internationalization virtually nullifies the possibility. In the absence of democratic transnational institutions, at best only a tiny minority of citizens in any country can exercise direct control, and often not much indirect control either, over the agenda of the transnational decisions, actions, choices, and influences that so profoundly affect their opportunities and life chances. But even if democratic transnational institutions are created, all the difficulties of exercising final control that already exist in democratic countries will be compounded.

Finally, there is the question of inclusion. Once again, the criterion is largely irrelevant in the present world, since except for the European

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Union no transnational structures exist with even the semblance of a democratic process. At best, decisions are made by unelected delegates appointed by national governments, many of which, and in some cases most of which, are not themselves dependent on elections. But often crucial decisions are not made even by official international organizations but by official and unofficial actors largely or wholly outside the purview of the official international organizations—banks, multinational firms, investors, government agencies, and so on. To propose that all persons significantly affected by these decisions should be included in the process would be seen as fanciful; that they should be included as political equals, democratic citizens if you like, seems an even more utopian claim.

Can Democracy Adapt?

These reflections suggest several ways by which the democratic idea might be adapted to the new change in scale.[6] The most obvious is to duplicate the second transformation on a larger scale: from democracy in the national state to democracy in the transnational state. However, the historical analogy is too imperfect to allow that facile conclusion. For in the countries where modern democratic institutions developed, the structures and consciousness of nationhood were already rather fully developed, but transnational political structures and consciousness are likely to remain weak in the foreseeable future. Only the European Union shows much sign of harboring a supranational growth gene. There the incipient institutions of a "democratic" transnational political community are faintly visible in the form of the European Parliament. A sort of transnational polyarchy might gradually come into existence. Though its citizen body would be massively larger than that of the United States, democratic ideas and practices applied to the Union as a whole might gradually take hold. Yet even in this case it seems fanciful to expect that the European Parliament in Strasbourg would ever become as responsive to the citizens of the European Union (whatever the membership of the EU may ultimately turn out to be) as the existing national parliaments of the present members of the EU.

Except for the European Union, the prospects for even moderately "democratic" governments of transnational political associations are

[6] This section is adapted from my *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 320–321.

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poor. Even if transnational political systems are greatly strengthened, for a long time to come decisions are likely to be made by delegates appointed by national governments. Thus the link between the delegates and the citizens will remain weak; and the democratic process will be even more attenuated than in existing polyarchies. With respect to decisions on crucial international affairs, the danger is that the third transformation will not lead to an extension of the democratic idea beyond the national state but to the victory in that domain of de facto guardianship.

This emerging possibility means that in order to maintain the vitality of the democratic process, democratic institutions within countries would need to be improved. Stronger democratic institutions would provide whatever democratic control may be possible over the authority delegated to transnational decision makers and thus help to prevent delegation from becoming in effect a total and permanent alienation of control. What form these might take is hard to say, but they might well include new and more effective institutions for enhancing citizen understanding, deliberation, and informed participation.[7] Stronger democratic institutions would also help to provide a healthy democratic political life within the large sphere of relative autonomy that democratic countries will still possess. Here the experience of the smaller European democracies is encouraging. Just as they maintained a vigorous and self-confident political life in the very process of adapting to their international vulnerability and dependence, so in the future all democratic countries will be challenged to discover ways of maintaining and strengthening the democratic process as they adapt to transnational forces. In this way, while freedom and control might be lost on one front, they could yet be gained on others.

In addition, democratic life in smaller communities below the level of the national state could be enhanced. The larger scale of decisions need not lead inevitability to a widening sense of powerlessness, provided citizens can exercise significant control over decisions on the smaller scale of matters important in their daily lives: education, public health, town and city planning, the supply and quality of the local public sector from streets and lighting to parks and playgrounds, and the like.[8]

[7] For some suggestions along these lines see James Fishkin, *Democracy and Deliberation* (New Haven: Yale University Press, 1991); Benjamin Barber, *Strong Democracy* (Berkeley: University of California Press, 1984), 261ff; and my "The Problem of Civic Competence," *Journal of Democracy* 3 (October 1992): 45–59.

[8] A useful analogy is furnished by attempts to democratize the workplace. A substantial body of research shows that in economic enterprises, arrangements by which workers are entitled to

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What is more, citizens in democratic countries should insist that extensive information be provided and wide-ranging public deliberation, discussion, and debate take place before they yield significant autonomy to transnational institutions. Because the problem of trade-offs in democratic values resulting from changes in scale has been largely ignored, the opponents of drastic increases in the size of a democratic unit have little to fall back on except sentiment, attachments, loyalties. Over the long span of history, they have won some rear-guard skirmishes and lost the deciding battles—a fate that may well await them in the coming century.

The burden of proof should be placed squarely on the advocates to show that the trade-offs definitely support the values of a majority of citizens. Fearful that discussion may easily arouse adverse reactions among citizens who may insufficiently understand the advantages claimed for transnational arrangements (advantages that will often be long-run, uncertain, and supported only by counterfactual theoretical arguments) when faced with a choice between wider public discussion or less, leaders favoring such moves may be tempted to avoid the pitfalls of widespread public deliberation. Yet because of the education of citizens that public deliberation helps to promote and the possibility of forming a more secure long-run consensus for or against a proposed change, to avoid extensive public deliberation would be, I believe, both morally and politically wrong.

For these reasons, by initially rejecting Maastricht in their 1992 referendum, engaging in further public discussion and debate, bringing about a reconsideration and renegotiation of some parts of the treaty to preserve greater Danish autonomy on certain matters, and then adopting the revised treaty through democratic procedures that insured greater consensus for this historic move, I believe that the Danish people made a positive contribution both to democratic values and the European community. The people of a democratic nation are not only fully entitled to explore the trade-offs between system effectiveness and citizen effectiveness, but I believe that commitment to democratic values obliges them to do so.

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participate in decisions are more highly valued at the level of the shop floor than at higher levels in the firm.

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Japanese–American Trade Conflict and Supercomputers

MARIE ANCHORDOGUY

Much of the literature on Japan's political economy focuses on whether Japan has fundamentally similar institutions and goals as those of other major industrial nations or whether they are different in ways that give Japan advantages in international competition. Proponents of the so-called market explanation of Japan's rapid development see Japan as fundamentally similar to other western democracies in terms of having relatively open and transparent institutions and policies that on the whole support the free trade regime and focus on maximizing consumer welfare.[1] They argue that market factors such as high investment and savings rates and high quality labor have been the primary impetus spurring Japan's rapid development along with a good education system and an ability to absorb quickly foreign technology. According to this view, Japan's rapid economic growth and success in specific industries has occurred in spite of inefficiencies caused by government intervention and outdated remnants of the past, such as *keiretsu*, the industrial groups that reemerged

[1] Hugh Patrick and Gary Saxonhouse are supporters of this view. Proponents do not argue that Japan's system is totally transparent nor completely open, but believe that any nontransparencies or closedness have not been important factors in explaining Japan's development. See fns. 2 and 3.

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in the post-world war II period.[2] Some concede that Japan's targeting policies may have helped specific industries marginally in the 1950s and 1960s and that there are clearly still some market segments that are somewhat closed.[3] But they argue that Japan has changed dramatically, that strategic trade and industrial policies are a thing of the past as Japan's political economy is converging with other western industrial democracies. Indeed, they argue, Japan is bending over backwards to meet not only the letter but also the spirit of the General Agreement on Trade and Tariffs (GATT), pointing out that it now has one of the lowest levels of trade barriers in the industrialized world.[4]

Proponents of the market view, which include most U.S. economists, long argued that the U.S. trade deficit with Japan had little if anything to do with Japan's industrial and trade policies and was instead primarily the result of an overvalued dollar. But the failure of the sharp plunge of the dollar against the yen since late 1985 to correct the U.S.-Japan trade imbalance has led to considerable soul searching. Several economists, after doing further research on Japan, have changed their views dramatically. Rudiger Dornbusch and Paul Krugman of MIT, Edward J. Lincoln of Brookings, and Mordechai E. Kreinin of Michigan State University, long-time proponents of the market explanation of Japan's postwar development, have in the past few years published works suggesting that in some cases Japanese state and corporate behavior is different from that of other western democracies in ways that tend to give Japanese firms advantages.[5]

One major revision that has occurred in their thinking regards the issue of strategic industries—those that are more valuable to a nation because they offer higher wages and/or profits than other industries or because they have positive spillovers onto other industries. Economists

[2] See Charles Schultz, "Industrial Policy: A Dissent," *The Brookings Review* (Fall 1983) and "Industrial Policy: A Solution in Search of a Problem," *California Management Review* 25 (Summer 1983); Komiya Ryutaro and Irie Kazutomo, "The U.S.-Japan Trade Problem: An Economic Analysis from a Japanese Viewpoint" in Kozo Yamamura, ed., *Japan's Economic Structure: Should It Change?* (Seattle, WA: Society for Japanese Studies, 1990), 65-104; Gary Saxonhouse, "Why Japan Is Winning," *Issues in Science and Technology* (Spring 1986): 72-80.

[3] Hugh Patrick, "Japanese High Technology Industrial Policy in Comparative Context" in Hugh Patrick, ed., *Japan's High Technology Industries* (Seattle, WA: University of Washington Press, 1986), 3-33.

[4] Komiya and Irie, "U.S.-Japan Trade."

[5] See Rudiger Dornbusch, "Give Japan a Target and Say 'Import,'" *New York Times*, 24 September 1989; "Misguided Efforts Won't Open Japan's Market," *Japan Economic Journal*, 16 December 1989, 9; Mordechai E. Kreinin, "How Closed Is Japan's Market? Additional Evidence," *World Economy* 11 (December 1988): 529-542; Edward J. Lincoln, *Japan's Unequal Trade* (Washington, DC: Brookings Institution, 1990); Paul Krugman, ed., *Strategic Trade Policy and the New International Economics* (Cambridge, MA: MIT Press,1986), 23-25.

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have traditionally argued that there is no rational motivation for a nation to target an industry, because a nation cannot benefit from targeting. They argue that a subsidy given to a company benefits the firm by the amount that it costs the government; the nation as a whole is no better off.[6] This argument is based on the assumption that if an industry does offer higher wages or profits, other firms will see the higher gains and enter the industry and thereby compete away the gains over time. A group of so-called new international economists led by MIT's Krugman recently acknowledged that there are industries that are "strategic" or more "valuable."[7] In these markets, higher profits or wages will generally not be competed away by new entrants, because huge start-up costs, economies of scale, and learning curve advantages create high barriers to entry. In short, their research shows that a government can raise national income by targeting industries that are more valuable either in terms of offering higher profits or wages or in having positive spillovers onto the rest of the economy. In particular, they point out that by subsidizing a domestic firm, which effectively lowers its costs, the government can enable it to lower its prices and win market share from nonsubsidized foreign competitors. Increased market share, which reduces average costs, can ultimately lead to greater market share and profits as well as positive spillovers to the economy, such as the accumulation of important knowledge and skills. Krugman and his colleagues suggest that the Japanese government, by using strategic industrial and trade policies, has been able to increase national income in this way in some cases.[8]

Laura D'Andrea Tyson, Giovanni Dosi, and John Zysman support Krugman's analysis but point out that because it focuses on allocative efficiency at a given point in time, it is static. It looks at the benefit of a subsidy at one point in time, when the subsidy is given.[9] They argue that a subsidy also impacts future gains and losses by influencing the types of technical skills, knowledge, and capabilities the nation develops. Seeing much technological change as "a path-dependent process in which the past affects the future scope of learning and innova-

[6] James Brander, "Rationales for Strategic Trade and Industrial Policy" in Krugman, *Strategic Trade Policy*, 23–25.

[7] Ibid.

[8] Ibid.

[9] Giovanni Dosi, Laura D'Andrea Tyson, John Zysman, "Trade, Technologies, and Development: A Framework for Discussing Japan" in Chalmers Johnson, Laura D'Andrea Tyson, and John Zysman, eds., *Politics and Productivity, How Japan's Development Strategy Works* (Boston: Ballinger Publishing, 1989), 3–38.

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tion,"[10] they argue that subsidies have an impact on a nation's long-term growth and technological trajectory. For example, by boosting domestic makers' shares and driving foreign competitors out of a strategic industry, subsidies of domestic makers affect the abilities of both domestic and foreign firms to enter and compete in future industries that require the knowledge and skill base of that industry.[11]

Others in the so-called Japan Inc. school of thought have long argued that state institutions and policies, by shaping market competition in specific industries, have played a key role in Japan's postwar economic miracle.[12] They believe that Japan's economy is not organized primarily on the principle of free markets and that Japanese companies and consumers do not have the maximization of their profits or income as their primary objective; markets are shaped with reference to national economic goals and the desire for self-sufficiency. They acknowledge that fierce market competition has been a key ingredient of Japan's success, but suggest that market forces have been shaped by state industrial and trade policies that benefit Japan. They identify institutions such as the Ministry of International Trade and Industry (MITI) and the various *keiretsu* as hindering access to Japanese markets. While they acknowledge that MITI's power has waned in recent years and that Japan's economy is more open now than it was in the 1970s, they believe that MITI still plays an important role in nurturing industries and technologies and that Japan's market is still considerably more closed to imports than those of other advanced industrial democracies. With the decline of United States hegemony, proponents of this view are particularly concerned about what they see as Japan's hesitation to take on a fair share of the economic and political burden of supporting the liberal economic order. They argue that while Japan is benefiting tremendously from the free trade regime, it is exploiting the openness of other nations by using strategic industrial and trade policies that work in ways that give Japan advantages over nations conforming with GATT rules.[13]

[10] Ibid., 20.

[11] Tyson elaborates on the issue of strategic industries in her recent book, *Who's Bashing Whom? Trade Conflict in High Technology Industries* (Washington, DC: Institute for International Economics, 1993).

[12] Chalmers Johnson, *MITI and the Japanese Miracle* (Stanford, CA: Stanford University Press, 1982); T. J. Pempel, "Japanese Foreign Economic Policy: The Domestic Bases for International Behavior," in Peter Katzenstein, ed., *Between Power and Plenty* (Madison: University of Wisconsin Press, 1978); Karel Van Wolferen, *The Enigma of Japanese Power* (New York: Knopf, 1989).

[13] Johnson, *MITT and Japanese Miracle*; Stephen D. Krasner, *Asymmetries in Japanese-American Trade: The Case for Specific Reciprocity* (Berkeley, CA: University of California, Berkeley,

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This article takes the position that in the past Japanese institutions and policies have worked in ways that nurtured comparative advantages in industries deemed strategic, in part by handicapping foreign firms operating in the domestic market.[14] It explores whether Japan is still using such policies in the 1980s and 1990s or whether they are a thing of the past, as the Japanese themselves and the market explanation proponents argue. This study focuses on Japan's attempts to develop a domestic supercomputer industry in the 1980s, examining whether or not and, if so, how Japan's public and private sector procurement, state targeting policies, corporate and market structure, and other institutional arrangements such as *keiretsu* helped Japanese firms nurture a competitive supercomputer industry. It finds that Japan still uses strategic industrial and trade policies and that they have been of critical importance in Japan's ability to create a viable supercomputer industry. It also highlights the advantages Japan gains in international competition because of its market and corporate structure, in particular the fact that its supercomputer makers are all members of large industrial groups and are conglomerates operating in at least three or four related markets such as mainframe computers, telecommunications, semiconductors, and consumer electronics. This corporate structure seems to be more suitable to the development of high cost, high risk technologies such as supercomputers than that of small U.S. companies, such as Cray Research, which have only one product line. This study shows that in the area of supercomputer trade, United States–Japan friction is largely the result of structural differences in state and corporate institutions, goals, and views towards market competition, rather than differences in tariffs or quotas, which can relatively easily be changed. While U.S. trade policy helped undercut Japan's policies and thereby enabled Cray Research to gain market share in Japan, trade policy alone was at best a short-term fix. It treated the symptoms—heavy discounting by Japanese markets; it did not treat the disease—Japanese companies' huge long-term structural advantages. This study also shows that in response to U.S. government pressure to open its markets, Japan has not changed its system into one of free trade. Rather it has invited a few select U.S. firms into the Japanese system, giving them a limited piece of the pie.

Institute of International Studies, 1987), 1–73; Krugman, ed., *Strategic Trade Policy*: Johnson et al. eds., *Politics and Productivity*.

[14] See Marie Anchordoguy, *Computers Inc.: Japan's Challenge to IBM* (Cambridge, MA: Harvard University Press, 1989), my earlier study of the computer and semiconductor industries.

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What Is a Supercomputer and Why Has It Become a Trade Issue?

A supercomputer is a general purpose computer that is faster than commercial competitors and that has sufficient central memory to compute problem sets of general scientific interest. In terms of speed, a supercomputer can do in one minute what it takes a mainframe computer three hours to do, a workstation fifteen hours, and a personal computer ninty-six hours. There are two major types of supercomputers: traditional supercomputers and massively parallel processing supercomputers. Traditional supercomputers—with one to sixteen processors—are the major focus of this article. A processor, often called a central processing unit (CPU), is the heart of the computer that manipulates data. Massively parallel processing machines, which are machines with from sixty-four processors up to thousands of processors, are beginning to be introduced in the market and are likely to be the trend in the next century; still, traditional supercomputers are expected to remain an important niche market.

Supercomputers are important for several key reasons. These very fast machines are considered by many to be a technology driver, by which the production and development of advanced supercomputers influence the pace of technological development in related industries, such as mainframe computers and semiconductors. According to this view, a nation that wants to be competitive in industries such as semiconductors, aerospace, defense, and automobiles needs to have a domestic supercomputer industry.[15] Not everyone agrees that developing and producing supercomputers drives the development of other key industries. Some argue that the important thing is for a nation to have immediate access to leading-edge supercomputers—that it is not necessary for a nation to have its own supercomputer industry unless there is a problem of timely access to advanced machines.[16] Despite these differences, both groups agree that the use of supercomputers helps make technological breakthroughs in a wide range of industries and that U.S. firms and public laboratories, for example, would be

[15] Author's interviews of Jack Worlton, scientist at Los Alamos National Laboratory, 30 November 1990; and of other scientists, business people, and government officials, in Japan and the United States, 25 September 1990, 30 November 1990, 22 October 1990.

[16] Author's interviews of supercomputer specialists at San Diego Supercomputing Center, 30 November 1990; at Lawrence Livermore Laboratory, 12 December 1990; at a major U.S. aerospace company, 12 December 1990; and of Hideo Yoshihara, supercomputer expert, formerly of Boeing, 19 November 1990.

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at a strategic disadvantage if they did not have access to these sophisticated machines. Supercomputers, for example, are used to simulate airplane and automobile crashes; by simulating these experiments, they help aerospace and auto firms decrease the costs of experiments and the time it takes to develop a product. Supercomputers used in molecular modeling help firms develop new materials and pharmaceutical products. Use of supercomputers by semiconductor companies to design more advanced chips also results in reduced costs and product development time.

Supercomputers have always been supported by governments. Like defense equipment and airplanes, they are highly sensitive to economies of scale, and limited global demand means only a few firms can survive. Moreover, until the last decade, governments have by far been the largest purchasers of these super expensive machines (often costing $10–30 million dollars). In the United States, state support for supercomputers has been primarily through procurement and the joint development of software by makers and government labs. The U.S. government did not intervene to help Control Data when its supercomputer division floundered and eventually went out of the business in 1989, but has shown increased concern over whether Cray Research, the only remaining U.S. maker, will be able to survive. The Japanese government has actively nurtured this industry with various strategic trade and industrial policies, including cooperative research and development (R&D) projects, Buy Japan procurement policies, and use of the quasi-governmental Japan Electronic Computer Company (JECC), a computer rental firm supported by low interest loans from the state's Japan Development Bank,[17] to rent some one-third of Japanese supercomputers.

Because of the strategic nature of supercomputers, along with the fact that it is a $1.1 billion market with an average annual growth rate of some 30 percent,[18] governments and companies have their eyes on this market. Analysis of the performance of supercomputers[19] sug-

[17] For an analysis of how JECC worked, see Marie Anchordoguy, "The Public Corporation: A Potent Japanese Policy Weapon," *Political Science Quarterly*, 103 (Winter 1988–89): 707–724.

[18] Gartner Group, Inc., *High Performance Computing and Communications: Investment in American Competitiveness* (prepared for the U.S. Department of Energy and Los Alamos National Laboratory, 15 March 1991).

[19] It is very difficult to directly compare machines, because their value in large part depends on what you want to use them for. There is a consensus that for one job, Japanese machines, because of their high speed, are best; but most supercomputers, for cost reasons, are time-shared and have several jobs running at a time. Thus the issue of throughput—performing a large volume of real work in a short period of time or the number of jobs done per day—becomes critical. Tested for

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TABLE 1

U.S. and Japanese Supercomputer Companies' Share of the World Market

	Market Share in Percent (Number of Installations)						
Company	*1980*	*1985*	*1986*	*1987*	*1988*	*1989*	*1992*
Cray	90%	56%	60.7% (148)	67%	64%	53.1% (219)	67.5% (309)
Fujitsu	0%		15.5% (38)	17%	12%	21.6% (89)	20.5% (94)
NEC	0%	24%	2.5% (6)	6%	4%	6.3% (26)	6.1% (28)
Hitachi	0%		4.5% (11)	4%	4%	7.8% (32)	5.5% (25)
CDC/ETA	10%	20%	16.8% (41)	6%	16%	11.2% (46)	0.4% (2)
Total	100%	100%	100% (244)	100%	100% (340)	100% (412)	100% (458)

Sources: *Kompyutopia*, December 1989, 76; *Nikkei Sangyo Shimbun*, 19 April 1989, 3; *Los Angeles Times*, 4 September 1987; *High Performance Computing and Communications: Investment in American Competitiveness*, Gartner Group, Inc., 69; Cray Research data.

gests that only Japan's most recently introduced (1991–1992) machines are close to being competitive with U.S. machines and still lag behind in applications software. Cray Research has over 500 applications programs for its machines compared to Fujitsu's 260, NEC's (Nihon Electric Company) 180, and Hitachi's 129.[20] It is thus not surprising that companies and governments in the United States and Europe have generally bought U.S. supercomputers. In contrast, the Japanese government and private sector have bought Japanese machines. (See Tables 1, 2, 3, and 4.)

Because Japan's market has been growing the fastest and is dominated by domestic firms making machines that were at least until very recently markedly inferior to their foreign counterparts, the U.S. gov-

this, Cray Research machines until recently always came out way on top. NEC's four processor SX-3, which hit the market in late 1992, along with Cray Research's C-90, which came out in late 1991, are comparable in speed. Hideo Yoshihara, "Performance of Japanese Supercomputers via-à-vis Cray Computers," *Scientific Information Bulletin*, Department of Navy, Office of Naval Research, Far East (ONRFE) 15 (July-September 1990); Kozo Fujii and Yoshiaki Tamura, "Capability of Current Supercomputers for Computational Fluid Dynamics," Institute of Space and Astronautical Science, ONR, bulletin no. 1, 14 February 1989; Jack Dongarra, "Performance of Various Computers Using Standard Linear Equations Software," Computer Science Department, University of Tennessee, 12 October 1989; Jack Dongarra, technical memo no. 23, Argonne National Laboratory, 9 February 1990; Gartner Group, Inc., *High Performance*, 89, 205; *Nikkei Kompyuta*, 5 May 1992, 206–209 and 9 September 1992, 172–179; interview of supercomputer specialists: one formerly of Boeing, 19 November 1990; three others currently at or recently retired from U.S. national laboratories, 30 November 1990. For a technical discussion and detailed comparison of supercomputers, see Anchordoguy, "Japanese Policies for the Supercomputer Industry," report for the Office of Technology Assessment, U.S. Congress, February 1991.

[20] Kawabata Naohisa, *Kompyuta Gyokai ga Abunai* (The Computer Industry Is in Danger) (Tokyo: Eiru Publishers, 1990), 119.

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TABLE 2

U.S. and Japanese Supercomputer Companies' Share of the European Market

	Market Share in Percent (Number of Installations)	
Company	*1989*	*1992*[1]
Cray	84% (73)	78.4% (120)
Fujitsu	9% (8)	16.3% (25)
CDC/ETA	6% (5)	3.3% (5)
NEC	1% (1)	2% (3)
Hitachi	0% (0)	0% (0)
Total	100% (87)	100% (153)

Source: Cray Research, NEC, Fujitsu.

[1] 1992 data is an estimate of market shares in Europe. People at Cray Research Japan, Fujitsu, and NEC all denied having exact data but gave me estimates over the phone. I used these estimates together with data from various articles.

ernment decided in the mid-1980s to pressure Japan to open up this market. Unlike in past cases, the U.S. government moved relatively quickly to try to limit the damage to U.S. firms from Japan's targeting by pressuring the Japanese government to buy more foreign machines, having an implicit Buy American policy for U.S. government supercomputer purchases, and carefully monitoring private sector purchases in the United States to make sure that they did not involve dumping.

Factors Contributing to Japan's Success in Nurturing a Domestic Supercomputer Industry

Corporate Structure

Japanese supercomputer makers have advantages over their foreign counterparts because of their corporate structure—especially the fact that they are all large, vertically integrated, and diversified across industries such as computer mainframes, semiconductors, telecommunications, and consumer electronics. In contrast to Japanese firms, U.S. companies, with the exception of ETA, a subsidiary of Control Data that withdrew from the supercomputer market in 1989, are all one-product companies. There are three U.S. makers. Cray Research is the only maker with machines in use. Cray Computer, Seymour Cray's firm that was spun off from Cray Research in 1989, received its first order for its new machine—the Cray-3—from Lawrence Livermore Lab in 1991, but it was unable to deliver on time so the Lab

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TABLE 3

U.S. and Japanese Supercomputer Companies' Share of the Japanese Market, Installed Base (Excluding Internal Use)

	Market Share in Percent (Number of Installations)				
Company	*1987*	*1988*	*1989*	*1990 (3/90)*	*1992 (3/92)*
Cray	13.0% (7)	11.5% (13)	10.1% (14)	15.6% (23)	20.64% (32)
Fujitsu	55.5% (30)	54.0% (61)	49.6% (69)	49.0% (72)	48.39% (75)
NEC	13.0% (7)	15.9% (18)	16.6% (23)	14.3% (21)	16.13% (25)
Hitachi	18.5% (10)	17.7% (20)	23.0% (32)	19.7% (29)	13.55% (21)
CDC/ETA	–	0.9% (1)	0.7% (1)	1.4% (2)	1.29% (2)
Total	100.0% (54)	100.0% (113)	100.0% (139)	100.0% (147)	100.0% (155)

Sources: *Dempa Shimbun*, 9 April 1987, 1; *Nikkei Uotcha IBM-Ban*, 30 April 1990, 22; *Advanced Computing in Japan*, Japan Technology Evaluation Center, October 1990, 140; and Cray Research data, 1992.

instead bought Cray Research's Y-MP C90 that came out in late 1991.[21] Cray Computer is running out of money, and even if it successfully completes its planned machine in the next year or two, experts say it will not be substantially advanced when delivered.[22] SSI (Supercomputer Systems, Inc.), the firm Stephen Chen started with IBM backing when he left Cray Research in 1987, folded in early 1993 when IBM's five-year funding of his project ended. Chen's 48- to 64-processor machine was supposed to be finished by 1993, and IBM decided not to extend further support. In early 1993, Chen announced a new company called Supercomputer International, which will continue his work; it is not yet clear how much and from where Chen will get his funding.[23]

Vertical integration gives Japanese supercomputer firms at least three key advantages. First, it allows them to cross-subsidize their divisions, funneling profits from healthy divisions into new high-cost, high-risk areas such as supercomputers. Indeed, they do not see the necessity for making a profit in this area in the short term; rather they see value in using their supercomputer divisions as a testing ground for sophisticated technologies that they will ultimately use in other products such as mainframes. In numerous interviews with Japanese government officials and industry people, all agreed that Japan's supercomputer makers are losing money on their supercomputers but that they are going for long-term market share rather than immediate profits.

[21] *Nikkei Bijinesu*, 11 May 1992, 30; *Nikkei Kompyuta*, 10 February 1992, 32.

[22] Author's interview of U.S. supercomputer expert, 7 April 1993.

[23] "Supercomputer Designer Sets Up New Firm Without IBM's Help," *The Asian Wall Street Journal*, 17 February 1993, 9.

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TABLE 4

Number of New Installations in Japanese Supercomputer Market, 1980–1992[1]

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1990[2]	1991	1991[2]	1992	1992[2]
Total (number of supercomputers)	2	0	0	4	8	12	32	40	38	39	29		44		24	
Annual growth rate	—	—	—	—	100%	50%	166.67%	25%	−5%	2.63%	−25.64%		51.72%		−45.45%	
Sales to public sector:																
Total	0	—	—	2	6	5	12	10	9	5	3	2	9	4	8	5
By foreign firms	—	—	—	0	1	0	0	0	3	0	1	1	2	1	1	1
By Japanese firms	—	—	—	2	5	5	12	10	6	5	2	1	7	3	7	4
Percent of public procurement of foreign machines	—	—	—	0%	16.67%	0%	0%	0%	33.33%	0%	33.33%	50%	22.22%	25%	12.5%	20%
Sales to private sector:																
Total	2	—	—	2	2	7	20	30	29	34	26		35		16	
By foreign firms	2	—	—	0	0	1	2	2	5	9	5		11		7	
By Japanese firms	0	—	—	2	2	6	18	28	24	25	21		24		9	
For internal use	0	—	—	2	2	1	4	4	5	6	5		2		0	
Percent of private sector procurement of foreign machines	100%	—	—	0%	0%	14.3%	10%	6.67%	17.24%	26.5%	19.23%		31.43%		43.75%	
Foreign share of all new procurements	100%	—	—	0%	12.5%	8.33%	6.25%	5.0%	21.05%	23.08%	20.69%		29.55%		33.33%	
Japanese share of all new procurements	0%	—	—	100%	87.5%	91.67%	93.75%	95%	78.95%	76.92%	79.31%		70.45%		66.66%	

Sources: *Nikkei Uotcha, IBM ban*, 30 April 1990, 21–24; *Nikkei Kompyuta*, 27 January 1992, 91–101; data from various magazine and newspaper articles.

[1] Dates of procurement vary among sources, in part because of the difference between the date of a bid and of its installation. I have used the dates most commonly given. It is impossible to get a complete list of procurements; there is some variation between all lists. Thus this is a very nearly but not perfectly complete list.

[2] The 1990 procurement agreement only covers machines over 300 MFLOPS and machines for which an open bid is required; thus there is a divergence between the number of total procurements and the total procurements for which the agreement applies. The first column for 1990, 1991, and 1992 shows the total number of machines procured by the government; the second column shows the number of those that were covered by the agreement. In 1990, both of the public procurements made after the agreement were covered by the agreement. In 1991, 4 of the 9 public procurements were covered by the agreement; the other 5 were of machines with speed of less than 300 MFLOPS. In 1992, 5 of the 8 public procurements were covered by the agreement. The other 3 were what a Japanese supercomputer insider called "illegal bids"; these are cases where a public institution does not have to have an open bid because it states it is just using the supercomputer experimentally or purchases a supercomputer for "some other use." These three procurements are: the National Aerospace Laboratory's purchase of both an NEC and a Fujitsu supercomputer for "experimental use," and the Japan Atomic Energy Research Institute's purchase of an NEC as "Monte Carlo simulation equipment" (Interview, 12 January 1993).

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"Supercomputers are the testing ground for Japanese logic and memory chips and new types of technology [which can then also be used in mainframes and other products]," explains Raul Mendez, a U.S. supercomputer expert, who is the director of the Institute of Supercomputing Research in Tokyo.[24] Sekimoto Tadahiro, president of NEC, one of Japan's major supercomputer companies, agrees: "Japanese supercomputer makers can use their technological improvements [related to supercomputers] in their mainframe computers; in that sense we are in a more advantageous position than the U.S. firms that specialize in supercomputers."[25] Uenohara Michiyuki, executive adviser to NEC and formerly the vice president in charge of NEC's research division, explains that profit is not the motive behind producing supercomputers: "The reason Japanese companies are going into the supercomputer business is for the same reason that auto companies get into race cars; even though its a small market, it drives the technology."[26] In short, going into supercomputers is important primarily for long-term profits and not necessarily for big profits in supercomputers per se, but more importantly in other divisions that will absorb advances made in supercomputers, such as high-speed chips and parallel processing techniques.

Not having to worry about short-term profits is one reason Japanese companies have been able to afford giving large discounts to public sector buyers and also sell machines abroad at below-cost prices. For example, when the Massachusetts Institute of Technology (MIT) announced in 1987 that it would install an NEC supercomputer, a bid NEC won in competition with several other companies including Cray Research, Control Data Corporation (CDC), and Amdahl (Fujitsu's American partner), the Department of Commerce sent it a letter warning that if the supercomputer was being procured at below market cost, a dumping investigation would be made; soon after, MIT withdrew its plan.[27] While Japanese and even some U.S. scientists complain about U.S. government obstructions of such imports, the fact is that NEC was clearly dumping: it offered to rent MIT a machine for $1.2 million the first year, with the fee gradually rising each year to $2 million dollars by the fifth year. The monthly list price of the machine was

[24] Author's interview, 19 September 1990.

[25] *Nihon Keizai Shimbun*, 23 April 1989, 4.

[26] Author's interview, December 1990.

[27] *Nihon Keizai Shimbun*, 7 November 1987. Author's interview of Department of Commerce official, 22 October 1990.

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¥90 million ($692,308),[28] making the annual list price fee some $8.3 million; the discount was thus on the order of 92 percent.

Cray, a relatively small one-product company, cannot afford such largesse. Cray's sales in 1989 were 4.8 percent of those of Fujitsu, 2.9 percent of those of Hitachi, and 3.6 percent of those of NEC.[29] These three Japanese companies have profit rates (profits as a percentage of revenues) of only some 2–4 percent a year, a level that would put a U.S. firm out of business. In contrast, Cray Research's profit as a percent of revenues has ranged from a high of 20.7 percent in 1988 to 11.3 percent in 1989.[30] The differences in size and breadth of product offerings are so large that many supercomputer specialists, businesspeople in the computer industry, and policy makers in both the United States and Japan do not see how Cray Research, a one-product-line firm with about $800 million in annual sales, will be able to compete over the long term with huge $16–27 billion Japanese companies that have semiconductor, telecommunications, and consumer electronics divisions from which to subsidize their supercomputer efforts. Research on cutting edge technologies, such as that involved in supercomputers, inherently involves failures. "If you are big, you can have a losing streak and still survive," explained Jack Worlton, laboratory fellow at the Los Alamos National Laboratory; "if you are small with only one project and it fails, you're out," he added.[31] "U.S. dominance in supercomputers is in jeopardy, [U.S. companies] will have difficulty overcoming the corporate depth of Fujitsu, Hitachi, or NEC," explains Hideo Yoshihara, a U.S. supercomputer expert who recently retired from Boeing.[32]

Indeed, the vertically integrated structure of Japan's electronics giants seems to be more effective in nurturing new high-cost, high-risk technologies and products such as supercomputers than small, one-product companies like those common in the U.S.'s supercomputer and semiconductor industries. Cray's one-product structure worked well in the past when its competitors too had to make a profit on supercomputers to reinvest to make new generation products. But this structure appears to be ineffective in the new global competitive

[28] *Nikkei Uotcha, IBM ban*, 26 December 1988; *Joho Sangyo Benran*, 1987–1988 (Tokyo: Joho Sangyo Shimbunsha, 1987), 174–176. (Calculated at 130 yen to the dollar.)

[29] Company financial reports.

[30] Ibid.

[31] Author's interview, 30 November 1990.

[32] Hideo Yoshihara, "Performance of Japanese Supercomputers," 74.

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environment in which Cray Research has to compete against large firms that can subsidize their supercomputer efforts for long periods with profits from other divisions. Cray Research was viable when it was primarily dependent on U.S. government procurement, where it was essentially like a defense producer with performance standards dominating issues of price and cost. While this structure may continue to be successful in this market niche, it seems to be a liability in making the transition to competing in the civilian, commercial market. The vertically integrated structure of Japanese firms, while effective in winning markets, is not without potential problems; it may not be the most efficient, at least in the short term, in that it may result in too many players in Japan.

A second major advantage Japanese companies get from their size and diversification is that they can afford to experiment with the super high-speed integrated circuits necessary for supercomputers, because they know they can use them in great volume in-house. This provides them with an assured supply of these strategic components, the importance of which started to be acutely felt by U.S. supercomputer makers in the 1980s.[33] Indeed, access to high performance semiconductors is key to success in supercomputers. A Fujitsu manager explained that because of Cray Research's dependence on Fujitsu for high performance chips, "Cray will always be late [compared to its Japanese counterparts] in getting out its new supercomputers because it does not have semiconductor capability."[34]

Cray Research is not only dependent on a foreign country, it is dependent on its major competitors—Fujitsu, and to a lesser extent Hitachi—for many of its most sophisticated chips, a situation arising from Cray's decision to rely on outside semiconductor makers rather than produce these components in-house. The Japanese are keenly aware of this dependence. Many Japanese documents mention this, and some suggest that this dependence is one reason Cray may not survive over the long term.[35] An article in *Nikkei Sangyo Shimbun*, a newspaper that follows the industry closely, calls for Japan to try

[33] In 1991, the General Accounting Office of the U.S. Congress found allegations by U.S. high tech companies complaining of delays of parts and machinery from Japanese sources to be true. See Eduardo Lachica, "Japan Electronics Suppliers Withheld Parts from U.S. Industry, GAO Finds," *Wall Street Journal*, 25 September 1991.

[34] Interview of a general manager in Fujitsu's Marketing Department, 11 January 1991.

[35] *Asahi Shimbun*, 29 April 1987; *Kompyutopia*, January 1990, 17; *Nihon Keizai Shimbun*, 10 May 1989, 8; Kawabata, *Kompyuta Gyokai ga Abunai*, 124.

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to make the United States more dependent on Japanese parts for supercomputers and other high tech products as a strategy for buffering Japan from trade criticism.[36] Clearly, while U.S. analysts, especially economists, have traditionally viewed industries as independent entities, there are important spillovers among them. This case shows that Japan's success in semiconductors was an important stepping stone to becoming competitive in supercomputers, and Japan's strength in semiconductors is largely due to state targeting of that industry.[37] Indeed, decisions made in the past two decades by U.S. and Japanese governments regarding promotion of and international trade in semiconductors are having a major impact on supercomputer competition today.

Finally, being vertically integrated enables Japan's supercomputer makers to use their machines in-house, for example, in their semiconductor divisions. Using these within the firm provides the supercomputer division with good feedback on how to make their machines more competitive. There are clearly high costs, especially fixed costs, associated with vertical integration. Many U.S. electronics firms were more vertically integrated in the past but have cut back because of both high fixed costs and their lack of success in managing integration effectively. Japanese firms seem to be able to manage the various divisions in ways that take advantage of the spillovers among them. And they are able to bear the heavy fixed costs because their financial system along with other arrangements, such as the *keiretsu*, allow them to invest heavily for at best long-term gains. The firms are willing to bear these costs because they are deemed outweighed by future profits and positive spillovers of knowledge and skills among the different divisions/related industries. Their large size and vertical integration also give them the deep pockets needed to invest heavily and to sustain heavy short-term losses.

Thus far Japan has also been able to avoid another potential disadvantage relating to the dominance of its electronics sector by large, vertically-integrated companies—a relative lack of small firms. Research suggests that small companies tend to do the primary inventions

[36] *Nikkei Sangyo Shimbun*, 8 September 1989.

[37] Michael Borrus, Laura D'Andrea Tyson, and John Zysman, "Creating Advantage: How Government Policies Shape International Trade in the Semiconductor Industry" in Krugman, ed., *Strategic Trade Policy*, 91–114; Anchordoguy, *Computers, Inc.*; Anchordoguy, "A Challenge to Free Trade? Japanese Industrial Targeting in the Computer and Semiconductor Industry" in Yamamura, ed., *Japan's Economic Structure*, 301–332.

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and innovations but that big firms are best able to commercialize these innovations rapidly and get them to market at competitive prices.[38] Since much U.S. research is in the public domain and U.S. firms can easily be purchased by foreign firms, Japanese companies have been able to minimize this problem by relying on the United States for many inventions. But as Japan's firms have caught up and even gone ahead in many areas, the lack of small firms is likely to become more of a problem in the near future.

Industrial Targeting Policies

While Japan's corporate institutions and structures helped create a conducive environment for the nurture of the supercomputer industry, the industry could not survive with corporate support alone; it also needed government help. Japanese electronics companies were not even interested in entering the supercomputer industry initially, because they thought there was not a large enough market for supercomputers.[39] "When the [government-sponsored cooperative R&D] project was started, there were few supercomputers in use worldwide, so we thought there was not enough demand. I do not think that one company would have made such a big effort in supercomputers [as the project has]," explained Oketani Kisaburo, section chief of Fujitsu's Market Planning Department.[40]

The government helped boost the industry's technological capacity through state-sponsored R&D projects, some of which focused specifically on supercomputer technologies and others that targeted the computer and semiconductor industries; the latter were important to Japan's supercomputer makers, because they all also operate in the computer mainframe and semiconductor industries. The details of targeting mainframes and semiconductors with heavy protection, subsidies, and government-sponsored cooperative R&D projects have been published elsewhere so will not be dealt with in detail here.[41] There are, however, two projects that deserve mention as key to Japanese firms' later efforts to develop supercomputers. The computer architecture that Fujitsu and Hitachi de-

[38] F. M. Scherer, *Industrial Market Structure and Economic Performance* (Chicago: Rand McNally, 1980), 2nd ed., 417, 438.

[39] Author's interview of Fuchi Kazuhiro, project director of the 5th Generation Project, who is also familiar with the supercomputer project, 2 August 1985.

[40] Author's interview of Oketani Kisaburo of Fujitsu, 1 December 1987.

[41] Anchordoguy, *Computers Inc.*

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veloped during the New Series project (1972–1976) is the basis of their mainframe and supercomputer architecture today.[42] Several specialists also point to MITI's (1976–1980) and NTT's (Nippon Telegraph & Telephone Co., 1975–1977) VLSI (very large integrated circuit) projects as being key to the ability of Japanese corporations to enter the supercomputer market in the 1980s.[43] This is not to understate the role of the firms' own efforts in the success story; state policies were a necessary but not sufficient condition.

The government's primary supercomputer project was the High Speed Computing System for Scientific and Technological Uses Project, 1981–1989. MITI and the makers knew that high speed devices and parallel computer architectures would be necessary to make better computers in the future and that these technologies and skills would have important spillovers onto the broader electronics industry and other industries that use electronic parts and computers.[44] The decision to focus on supercomputers made sense in the natural progression of helping the large vertically-integrated firms move toward higher value-added machines. The primary goal of the project was to help the firms gain the building blocks for making their own supercomputers, but the formal goal was to develop a prototype. To get project money from the Ministry of Finance, MITI needs to be able to show them something tangible at the end.[45]

The project was fully funded by the government with ¥18.2 billion ($121.33 million); it targeted a ten Gigaflop parallel processing supercomputer, a speed that at that time seemed like a dream.[46] The six

[42] Fujitsu's M-380 mainframe and Hitachi's M-280H mainframe were used as the starting point for the development of their Fujitsu VP series of supercomputer and Hitachi S-810 supercomputers respectively. Raul Mendez, "Japanese Supercomputers" in *Vector Register* (Tokyo: The Institute for Supercomputing Research), vol. 3 (October 1989): 4; *Dempa Shimbun* 1 July 1987 and 8 September 1986.

[43] Raul Mendez, "Japanese Supercomputers," *Vector Register* (Tokyo: Institute for Supercomputing Research) 3 (October 1987): 4. NTT provided ¥20 billion ($100 million) to work with Fujitsu, Hitachi, and NEC on 64K bit RAMS, something immediately commercializable. The four year MITI VLSI project, which involved five companies, developed the production equipment necessary to produce VLSI; it cost ¥72 billion ($360 million), of which ¥30 billion was funded by the government. See *Toyokeizai*, 5 July 1975, 72; *Denshi*, July 1976, 9, 14.

[44] *JECC Nyusu*, 1 February 1981, 1; *Saisentan Gijutsu no Doko* (Trends in Leading-Edge Technologies), (Tokyo: MITI's Gyosei Shiryo Chosakai, 1983), 748; *Kompyutopia*, October 1980, 107–8.

[45] Author's interview of Nishikawa Taizo, deputy director, Industrial Electronics Division, Machinery and Information Industries Bureau, MITI, and Furutani Takeshi, deputy director, Electronics Policy Division, Machinery and Information Industries Bureau, MITI, both on 25 September 1990; of Aiso Hideo, 25 September 1990.

[46] *Kagaku Gijutsuyo Kosoku Keisan Shisutemu no Kenkyu Kaihatsu ni kan suru Hyoka Hokokusho* (The Evaluation Report of the Research and Development done in the High Speed System

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major vertically integrated computer/semiconductor companies–Hitachi, Fujitsu, NEC, Mitsubishi, Oki, and Toshiba—participated in the project. Matsushita and Sony wanted to join the project but were not allowed in.[47] MITI has consistently limited the members of national R&D projects to the few large and vertically-integrated electronics firms in order to discourage excessive competition. MITI does, however, always invite several firms to join a project and ensures that each key part of a project involves at least two firms to ensure that competition, though limited, is intact.

The project focused on high speed devices and parallel architectures. The research on high speed devices was divided up among the six participating firms: NEC, Toshiba, Hitachi, and Mitsubishi researched gallium arsenide chips; Fujitsu, Hitachi, and NEC, Josephson Junctions; Fujitsu and Oki, HEMT (High electronic mobility transistor) devices.[48] Both U.S. and Japanese researchers agree that this project helped the Japanese firms gain the lead in these technologies.[49] The machine Fujitsu announced in 1992, for example, uses gallium arsenide chips.[50]

The research on parallel processing was divided into three subgroups: the high speed parallel (4 CPU) subproject; the sigma-1 dataflow subproject; and the satellite image processing subproject. The high speed parallel subproject was the most important. In a very practical approach to developing a 4 CPU machine as effectively and quickly as possible, the subproject combined into one machine four of Fujitsu's already successful one processor machines,[51] which have an architecture based on that developed in an earlier MITI project. By doing so, Fujitsu was able to focus on developing the software needed to get

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for Scientific and Technological Uses), MITI, ed., August 1990, 8. (Calculated at ¥150 to the dollar.) The initial budget was ¥23 billion; *Denshi Kogyo Geppo*, vol. 24, no. 9, 42-47. *JECC Kompyuta Noto*, 1982, 196-199.

[47] Author's interview of Aiso Hideo, head of the project, 25 September 1990.

[48] *Electronics*, 13 January 1982, 71. Most of the research was done separately by the firms except for the ETL Lab used for the data flow machine research. There was cooperation to make the parts compatible.

[49] Koichiro Tamura, "General Remarks on the Achievements of the National R&D Program, High Speed Computing System for Scientific and Technological Uses," *Vector Register* 3 (Fall 1990): 5-6; David Kahaner and H. T. Kung, "Aspects of Parallel Computing Research in Japan—NEC and Fujitsu," ONRFE, 6 November 1990.

[50] *Nikkei Kompyuta*, 5 October 1992, 22.

[51] The processor from Fujitsu's VP-2600 machine was used. David Kahaner, "Japanese Government Science Structure and Computer Related Projects," ONRFE, 30 July 1990; *JECC Nyusu*, 1 August 1990, 5; *Nikkei Sangyo Shimbun*, 30 March 1989, 1; author's interview of a U.S. scientist at ONRFE, 27 September 1990; author's interview of Nishikawa of MITI, 25 September 1990.

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the four processors to operate in parallel. The prototype high speed parallel system ran at over ten gigaflops. It has been designed so that up to sixteen processors can be used, but because of budget constraints they only experimented with four.[52] Fujitsu used the knowledge of multiple processors it gained in developing this 4 CPU prototype in a supercomputer it recently announced.[53]

The Sigma-1 Dataflow subproject focused on developing a machine with 128 processors, a precursor to a massively parallel machine with 1,024 processors.[54] Dataflow machines were tried in the United States and were not very successful; thus most U.S. scientists do not see this part of the project having a big impact on Japanese supercomputers.[55] They also had software problems according to a U.S. researcher who visited the ETL lab in both 1989 and 1990 and saw little progress made on the software necessary to run the machine.[56] Nonetheless, the research group's successful completion of a 128 processor machine adds to their knowledge of multiple CPU processing.

The third subproject was the satellite image data processing system, another way of exploring parallel architectures.[57] This system can be used for data processing of images and visualization. Three types of architecture were explored: Toshiba focused on a three dimensional display processor using sixteen very fast VLSI processors; Mitsubishi worked on a simpler machine aimed at processing satellite image data; Oki worked on a two dimensional display using eight processors for use in global data processing networks.[58] These results will help these firms make parallel processing machines for voice and pattern recognition and visualization, areas considered important in the 1990s.

As early as the mid-1980s, people from the firms involved said that the project was helping them significantly,[59] but the big results of the

[52] *JECC Nyusu*, 1 August 1990, 5.

[53] Jonathan Weber, "Fujitsu Unveils Innovative Supercomputer," *Los Angeles Times*, 10 September 1992; *Nikkei Kompyuta*, 5 October 1992, 22.

[54] *JECC Nyusu*, 1 August 1990, 4–5.

[55] Kahaner and Kung, "Aspects of Parallel Computing."

[56] Olaf Lubeck, a researcher at Los Alamos National Laboratory. Lubeck's notes in a report from ONRFE, entitled "ETL Dataflow Project," written by David Kahaner, 2 July 1990.

[57] *JECC Nyusu*, 1 August 1990, 5.

[58] Author's interview of Aiso, 25 September 1990; *JECC Nyusu*, 1 August 1990, 5; Koichiro Tamura, "General Remarks," 7–8.

[59] Author's interview of Kitagawa Noriyoshi of NEC's Second LSI Division, 3 February 1986; Yamamoto Kinko, managing director of JIPDEC, 3 December 1987; discussion with Hiyaguri Toshio, director and general manager of Fujitsu's Computer Group after his talk at the Tokyo Foreign Correspondent's Press Club, 4 December 1985; *Denshi Kogyo Nenkan* 1986, 186.

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project are yet to be incorporated into the firms' machines. The final prototype, completed in early 1990, is a demonstration of how the main technologies developed in the project work together, primarily the device technologies and the results of the high speed parallel subproject;[60] it is not a prototype of a machine that could be directly commercialized. While Fujitsu was the main contractor for the prototype of the ten gigaflop machine, doing the computing system and integration of all the parts, Hitachi did the operating system, and NEC the high speed, large-capacity storage system.[61] There have been many concrete results: in the final prototype, gallium arsenide devices were used, though not as extensively as initially envisioned. Josephson Junction devices were not used, although the project's advances put Japan ahead in this area, which is considered to have good prospects in the late 1990s and after.[62] Fujitsu used these results to develop a hybrid Josephson Junction-VLSI device, which it plans to use in its next generation supercomputers, expected out in the mid-1990s.[63]

There were also many important, though less tangible effects of the project. First, it got the private sector to focus on the supercomputer market. The timing was critical. The firms were not initially interested in the project, thinking that demand for supercomputers was too small. But when the government offered to fund the entire project, the firms went along. The makers may have decided later to go more aggressively into supercomputers, but the project got them to commit themselves sooner and through cooperation to get the job done faster. And the division of labor reduced redundant R&D, gave the firms access to many basic technologies involved in supercomputers, and accelerated the progress the firms would have made if any one firm had worked on its own. "The Japanese industry and R&D institutes are very cooperative and often go on 'division-of-labor' arrangements. This gives us a considerable edge over IBM which has to do everything on its own," explained Fujitsu Chairman Kobayashi Taiyu.[64] By reducing the costs and risks for these firms to enter the supercomputer field, the project provided them with the tools necessary to build very sophisticated

[60] Koichiro Tamura, "General Remarks," 8.

[61] Interview of Aiso; David Kahaner, "Japanese Government Science."

[62] *JECC Nyusu*, 1 August 1990, 5; Koichiro Tamura, "General Remarks," 3-8.

[63] *Nihon Keizai Shimbun*, 3 February 1991.

[64] *The Oriental Economist*, January 1980, 29. A Science and Technology Agency official who worked with MITI on the supercomputer project also argued that the firms, by cooperating in the project, were able to accelerate development. [Author's interview, 23 June 1993].

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machines over the long term. Some 602 patents resulted from the project;[65] these are open to all participating companies for a nominal fee and to other firms for a higher though still reasonable fee.

The companies supplemented the project with their own independent research. A Japanese expert said the three supercomputer makers each spent three to four times the project budget on supercomputer research during this period,[66] suggesting some $360–490 million in investment by each firm. This, along with the $121.33 million provided by this government project, more than covers the costs of developing new generation supercomputers. In comparison, Cray Research spent some $100 million in development costs for its C90 machine which came out in late 1991.[67]

The most important government project was the Fifth Generation Computer Project, 1982–1991, a ¥100 billion project, supported by ¥54 billion ($360 million) in state funds.[68] This project researched parallel processing for artificial intelligence—for a "thinking" computer (as opposed to one for numerical computing applications). The project ended in March 1992 with mixed results. It was not successful in achieving its ambitious goal of creating a prototype of a thinking machine. In particular, U.S. and even some Japanese scientists criticized the project's focus on logic programming and the fact that it did not produce any fundamental advances.[69] But one of the project's interim results—Mitsubishi's uniprocessor and sixteen processor parallel inference machines—was demonstrated at the Argonne National Laboratory a few years ago. An Argonne scientist was very impressed: "They are learning a lot about parallel processing. By working in this project, the companies have gotten their brightest people exposed to many issues in parallel processing and to the international scientific community. Now that the project is ending, these people will go back to their firms with this knowledge. The project has not been a total

[65] *Kagaku Gijutsuyo Kosoku Keisan Shisutemu no Kenkyu Kaihatsu ni kan suru Hyoka Hokokusho*, 15.

[66] Author's interview, 25 September 1990.

[67] *The Japanese Public Sector: Problems and Prospects for U.S. Supercomputer Vendors*, May 1990, Cray Research, Inc., 2–3. NTT has also been helping Fujitsu, NEC, and Hitachi with its own supercomputer project. Unfortunately, it is impossible to get further information on this project.

[68] *Nihon Keizai Shimbun*, 19 June 1992, 13.

[69] *JTECH Report on Advanced Computing in Japan*, Japan Technology Evaluation Center (McLean, VA: Science Applications International Corporation), December 1987; *Nikkei Kompyuta*, 24 August 1992, 145–152.

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success, but I expect a favorable long-term effect."[70] Other international experts also emphasize the learning value of the project.[71] In the final stage, Fujitsu made a 512-processor parallel inference machine module, Mitsubishi and Hitachi each a 256-processor, and Toshiba and Oki each a 16-processor machine. Fujitsu used these modules to make the project's final 1,000 processor prototype machine.[72] Though these machines are still in the prototype stage, the firms and their researchers gain valuable experience in developing massively parallel machines. MITI has recently announced a successor to this project—the Real World Computing Partnership, a ten-year effort, supported by ¥60 billion ($480 million) in government funds—which aims to develop a computer with a million or more processors.[73]

In addition to the benefits the supercomputer makers have gotten through the cooperative R&D projects mentioned above, they have also received subsidies indirectly through their use of JECC, a quasi-governmental rental company, to rent their supercomputers. A third of Fujitsu's supercomputers are rented through JECC. "A substantial amount of our supercomputer business comes from JECC," explained Watanabe Tadashi of NEC.[74]

The Japanese government is not alone in supporting supercomputers. The U.S. government also supports its industry, funneling some $500 million into advanced computing each year through the National Science Foundation, NASA, the Department of Defense, and the Department of Energy.[75] The Clinton administration is expected to increase this through the Federal High Performance Computing Program, which calls for an additional $1.9 billion in government funding over the next five years to expand and upgrade a national research network and to support joint research between government, industry and universities on selected "grand challenges" in science, such as forecasting global climatic changes, mapping the human genetic code, and re-

[70] Author's interview, 5 December 1990; a Hitachi Center Lab engineer with close ties to the project also emphasized how the project helped prepare the basic infrastructure for future computer advances. (Author's interview, 11 June 1993).

[71] *Nikkei Sangyo Shimbun*, 11 June 1992.

[72] Interview of Aiso, 25 September 1990; *Kompyutopia*, September 1991, 150–157; *Nikkei Kompyuta*, 24 August 1992, 145–52.

[73] Kahaner and Kung, "Aspects of Parallel Computing"; *Nikkei Kompyuta*, 21 December 1992, 40; Real World Computing Partnership, "Real World Computing." The project started in July 1992.

[74] *Business Tokyo*, May 1990, 8.

[75] *A Research and Development Strategy for High Performance Computing*, Executive Office of the President, Office of Science and Technology Policy, 20 November 1987, 26.

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searching superconductivity, to mention a few.[76] This aid has undoubtedly helped U.S. supercomputer makers. But a major goal of this funding has been to support basic R&D and the infrastructure for advanced computing (not necessarily computers), primarily for defense purposes, and also to research other grand challenges in science. Thus, this money is used largely to provide international public goods such as defense, technology, and knowledge. Since much of this is in the public domain, Japan also accrues great benefits from it.

Procurement of Supercomputers

Strong state and private sector preferences for domestic machines have been an integral part of Japan's state and corporate policies. Such purchases helped boost Japanese firms' share of the domestic market at a time when Cray Research would have won procurements had the market been open, giving them the time necessary to build up their technological capabilities.

Private sector procurement. Analysis of private sector procurement of supercomputers in Japan shows that many are purchases of a group member's machine. This trend is especially pronounced for Fujitsu, Japan's major computer and supercomputer maker. Of twenty-one Fujitsu group companies that own supercomputers, seventeen own Fujitsu and four own foreign machines; of twenty-three NEC group companies that own supercomputers, ten own NECs, six own machines of other Japanese makers, and seven own foreign machines; and of seventeen Hitachi group companies, five own Hitachis, seven machines of other Japanese supercomputer makers, and five foreign machines (See Table 5). (This does not include machines used internally.) Thus 52.5 percent of *keiretsu* firms that own supercomputers purchased their group firm's machines. This support enables the supercomputer firms to gain economies of scale and technological expertise at the expense of more competitive foreign counterparts. Table 5 data also suggest that group firms not only tend to buy their group member's machines, but to a lesser extent tend to buy foreign machines if they go outside their group.

At first glance this data for *keiretsu* does not appear very persuasive. But considering that Japanese machines were far behind their western

[76] *The Federal High Performance Computing Program*, Executive Office of the President, Office of Science and Technology Policy, 8 September 1989, 46; Sidney Fernbach, "A U.S. High-Performance Computing Program," *The International Journal of Supercomputer Applications* 4 (Spring 1990): 3–5.

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TABLE 5

Purchases by Firms with Keiretsu *Ties to Japanese Supercomputer Makers, 1980–1992 (Excluding Internal Use)*

	Number of Machines			
Company Group	*Total Purchases by Group Members*	*Purchases from Affiliated Makers*	*Purchases from Other Japanese Makers in Competing Groups*	*Purchases of Foreign Supercomputers*
Fujitsu's group	21	17	0	4
Hitachi's group	17	5	7	5
NEC's group	23	10	6	7
Total	61	32	13	16

Source: *Nikkei Uotcha, IBM-Ban*, 30 April 1990, 21–24; *Kigyo Keiretsu Soran*, 1991; *Nikkei Kompyuta*, 27 January 1992, 91–101; data from various magazines and newspaper articles.

counterparts until 1986 and are still behind in software applications, it is unlikely that many of these purchases would have been made without such intragroup ties. Indeed, Japanese makers feel strong pressure to buy within the group and go outside only when survival is at stake. "We would like ideally to purchase the supercomputer of the maker in our group, but if we try to save the face of each firm in our group, we'd be defeated in the severe competition we face, and we cannot afford to do that," explained one auto maker.[77]

Nissan, which has a long relationship with Hitachi, has also bought foreign—two Cray supercomputers. But Nissan's first purchase of a Cray in 1986 only came after U.S. government pressure. Nissan engineers leaked to the U.S. Embassy in Tokyo and to Cray's office there that they wanted a Cray but that top company executives had decided to purchase a Hitachi due to their relationship. The leak had its intended effect: the U.S. Trade Representative (USTR) and Department of Commerce officials discussed the issue with MITI, which in turn pressured Nissan to purchase a Cray.[78] Since then, Nissan officials have frequently stated that Cray's simulations software and its UNIX-based operating system are the deciding factors in its purchase of Cray machines.[79] Mazda, which is heavily indebted to the Sumitomo group

[77] Kawabata, *Kompyuta Gyokai ga Abunai*, 120.

[78] Author's interviews of former Cray employees involved, U.S. embassy officials and former USTR officials, September and October, 1990. They also confirmed that other similar cases have occurred.

[79] Kawabata, *Kompyuta Gyokai ga Abunai*, 121; *Nikkei Sangyo Shimbun*, 21 December 1988 and 1 May 1989; "Supercomputer Bout," *Business Tokyo*, April 1990, 33.

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for bailing it out when it was threatened with bankruptcy, solved its obligation to the group by a compromise: it bought an NEC machine to save face with the Sumitomo group and a Cray for its superior applications software.[80]

Many argue that supercomputers are driving the competition in auto design today, and Toyota's purchase of a Cray after it learned that Nissan had made key advances using one supports this notion. Toyota had been using a Fujitsu; its switch to a Cray only serves to underline the superiority of Cray machines, at least for auto industry applications.[81] Indeed, the auto industry is the clearest example of an industry in which all major actors have Cray machines. Eighteen (42 percent) of Cray's forty-three sales to Japan's private sector are in the auto industry.[82] The primary reason is their performance, especially their crash simulation applications software. Of much less significance, Japanese auto companies are aware that buying foreign machines helps balance their huge exports of autos to the United States.[83] And the environment created by U.S. government demands for increased sales to the public sector also pressured the private sector to do the same. There has been a strong tendency in all important industries for Japanese firms to buy Japanese; their decisions to buy foreign supercomputers were undoubtedly due in part to U.S. government pressure.

While Cray has been able to attract some customers from the groups of Japan's supercomputer makers, its biggest market is firms that are not part of the such groups. Thirty percent of all supercomputer purchases in Japan have been by private companies unaffiliated with the groups of Japan's three supercomputer makers; but 52 percent of the purchases of Cray machines were by such companies, compared to 30 percent for Fujitsu, 21 percent for Hitachi, and 17 percent for NEC (See Table 6). Toshiba is one such example. In 1989 it bought a Cray Y-MP8/4128 for its applications software, and because it worked on UNIX, which was compatible with Toshiba's engineering work stations.[84] In sum, *keiretsu* relationships—many of which involve firms favoring group member products over foreign machines of higher quality and/or better price—explain some of the procurement in Japan's pri-

[80] Kawabata, *Kompyuta Gyokai ga Abunai*, 121.
[81] "Supercomputer Bout," *Business Tokyo*, April 1990, 33.
[82] *Nikkei Uotcha, IBM ban*, 30 April 1990, 21-24.
[83] *Nikkei Sangyo Shimbun*, 21 December 1988; *Nihon Keizai Shimbun*, 21 April 1988.
[84] *Dempa Shimbun*, 26 September 1989.

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TABLE 6

Japanese Procurement of Supercomputers, 1980–1992

	Number of Machines						
Company	Total Procurement	Procurement for Internal Use	Purchase by Own Group Company	Purchase by a Firm in Another Supercomputer Maker's Group	Purchases by the Government	Purchases by Private Universities	Purchases by Private Companies Unaffiliated with the Three Groups
Fujitsu	127	9	17	10	35	18	38
Hitachi	52	18	5	1	13	4	11
NEC	41	4	10	2	13	5	7
Cray Research	50	–	–	16	7	1	26
CDC	2	–	–	–	1	1	–

Sources: *Nikkei Uotcha, IBM-Ban*, 30 April 1990, 21–24; *Kigyo Keiretsu Soran*, 1991; *Nikkei Kompyuta*, 27 January 1992, 91–101; data from various magazines and newspaper articles.

vate sector. That many companies in these groups have purchased Cray machines supports the notion that Cray is quite competitive.

The fact that Japanese firms are vertically integrated and can use their supercomputers in their semiconductor divisions also explains a chunk of private sector procurement. Of Hitachi's total sales of fifty-two machines, eighteen (35 percent) are used internally; of NEC's forty-one, four (10 percent) are used internally; of Fujitsu's one-hundred-twenty-seven, nine (7 percent) are used internally.[85] (See Table 6.) Finally, strong societal pressure to buy Japanese also tilts the market in domestic firms' favor.

In cases such as supercomputers, where the performance of Japanese machines at least until very recently has been far inferior to that of Cray, the strong reliance on domestic machines appears to be a strategy for helping domestic makers get a foothold in this important industry. The fact that the share of U.S. supercomputer makers in Europe is some 82 percent vs. Japan's 18 percent shows U.S. competitiveness. Also, the fact that only one non-Hitachi group company and two non-NEC group companies have bought their respective machines shows that at least these two makers would most likely have pulled out of the business if not for *keiretsu* preferences, government favoritism for domestic makers, and internal use of their own machines; this would have boosted Cray and Fujitsu's sales.

[85] It is especially difficult to get complete data on procurement for internal use; this data if anything underestimates the number of machines these firms bought for internal use.

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Public sector procurement. Analysis of public sector procurement shows that of sixty government purchases of supercomputers up through 1992,[86] seven have been of foreign machines. (See Table 4.) The Japanese government first bought a supercomputer in 1983, the year Japanese firms introduced their first models. The Cray-1 had been out since 1976, and Japan's private sector had purchased two foreign machines as early as 1980. When Japan's public sector started to buy supercomputers, the U.S. government and supercomputer makers realized that the public procurement process was not transparent—U.S. firms were never notified when a procurement would occur—and that it involved 80–90 percent discounts off list prices. In January 1986, NEC beat Cray and Control Data Corporation in a bid to supply a supercomputer to the Houston Area Research Center (HARC), a consortium of four universities in Texas.[87] Apparently NEC's price was very low, causing the United States to be concerned as to whether Japan was beginning a practice in supercomputers that the United States had already experienced in consumer electronics, steel, machine tools, and semiconductors—dumping in U.S. markets to gain long-term market share. This strategy, combined with protecting the home market, has been a key way that Japan's strategic trade and industrial policies have helped boost domestic makers' market share at the expense of their foreign counterparts.

At the end of 1992, foreign supercomputer companies (Cray Research and CDC) had a 10 percent share of Japan's public sector and 21 percent of its private sector markets (Table 4). Because of slow progress in chipping away at the Japanese market, despite expert evaluations showing U.S. supercomputers ahead in most areas,[88] the U.S. government pressured Japan into two procurement agreements, one in 1987 and another in 1990.

The U.S. Government's Response

Unlike in the past, the U.S. government intervened relatively early to limit the damage caused by Japan's strategic trade and industrial policies. In industries such as televisions, autos, steel, machine tools, and memory chips, Japanese companies, operating in a protected home

[86] The 1990, 1991, and 1992 data are for procurements covered by the 1990 procurement agreement.

[87] "U.S.-Japan Competition in Supercomputers," *Japan Economic Institute Report*, no. 13a, 30 March 1990, 8; *Nihon Keizai Shimbun*, 10 January 1986.

[88] See footnote 19 above.

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market, were able to dump their goods in the United States for long periods of time, in some cases driving U.S. makers out of the market altogether.

U.S. action on supercomputers occurred at a time when there was growing sentiment in both Europe and the United States that Japan's protection and promotion of industries was out of balance with similar policies in the other advanced nations. Indeed, while all the advanced industrialized nations protect some industries for political, social, or national security purposes, there is an implicit understanding that each will nurture an acceptable number of industries, that they will be relatively balanced.[89] Japan has long depended on open U.S. markets for its products, while protecting its own industries at least until they had become fully competitive; and it has long relied on the United States for its defense, spending little (as a percentage of GNP) even compared to the smaller European nations. This was understandable when Japan was a developing country, getting back on its feet after the war. But the Japanese government has continued to protect and target many industries and to import primarily raw materials and low-value added goods while exporting high value-added manufacturing goods.[90] Simultaneously, Japan claims that its system is (or is moving toward becoming) fundamentally similar to those of the West – based on free market principles. Morita Akio of Sony and other prominent Japanese leaders have publically acknowledged in recent years that the Japanese system is quite different from that of the West in that it diverges sharply from a free market system, making it nearly impossible for foreign firms to beat Japanese companies in international competition.[91]

The U.S. government grew increasingly aware of potential differences, many of which were a topic of discussion in the Structural Impediments Initiative (SII), a series of U.S.-Japan negotiations focused on eliminating structural barriers to entering the Japanese market (such as *keiretsu*, the distributional system). But despite this knowledge, the government decided to deal with only the clearest and easiest to solve aspect of the supercomputer problem – Japan's violation of the

[89] Robert O. Keohane, "Reciprocity in International Relations," *International Organization* 40 (Winter 1986): 1-27.

[90] See, for example, Lincoln, *Unequal Trade*; Krasner, *Asymmetries in Japanese-American Trade*.

[91] Morita Akio, "Nihongata Keiei ga Abunai" (Japanese-style Management in Danger) *Bungei Shunju*, February 1992, 94-103. Ogura Kazuo, "Japan, U.S. Battle Gap Between Values," *The Daily Yomiuri*, 5 July 1991.

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GATT code for public procurement, which requires open procurement except for areas related to national security. The Reagan and Bush administrations generally believed that Japan was becoming more similar to the United States and just needed a bit more nudging to become open; they still put priority on Japan as a strategic ally, subordinating U.S. economic interests. There was little understanding of how the deeper structural differences actually impacted supercomputer trade and no consensus in the government on how to deal directly with these more complex issues.

Thus the United States government's response to Japan's efforts to create a comparative advantage in supercomputers was to pressure the Japanese government to open its public sector market. This may appear to be unfair, given that the U.S. government itself has an implicit Buy American policy toward supercomputers. But it was deemed necessary to help level the playing field, given the structural and institutional differences, such as the *keiretsu*, cross-subsidization of the supercomputer divisions, and the Japanese financial system.

Since the late 1970s, the U.S. government had raised the issue of Japan's lack of public procurement of foreign supercomputers. By late 1985 and early 1986, the United States started to express more forcefully to the Japanese government its dissatisfaction with the lack of transparency of the Japanese market, the lack of public procurement of foreign supercomputers, and the Japanese corporate practice of offering discounts of up to 80–90 percent on supercomputers. The United States government was procuring competitive Japanese products, but the feeling was that such behavior was not being reciprocated by Japan. By 1986, the Japanese government had purchased twenty-two supercomputers, only one of which was foreign, even though U.S. machines were undoubtedly far superior at the time (Table 4). In response to U.S. complaints, Prime Minister Nakasone Yasuhiro assured the United States that NTT would buy another Cray supercomputer to improve the trade balance.[92] Nakasone's decision came at a time when NTT was in pains over how to increase their procurement from the United States. Apparently NTT President Shinto Hisashi and other NTT officials felt there was nothing left that NTT could buy from the United States and that the United States did not make any telecom-related equipment worth buying.[93] Soon after, Shinto made a

[92] *Nihon Keizai Shimbun*, 11 March 1989. NTT was a 100 percent government-owned monopoly until 7 April 1985, but is still largely owned and regulated by the government.

[93] *Kompyutopia*, January 1989, 12–19.

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deal with the head of the Recruit Corporation, a Japanese real-estate/job-referral firm that was involved in a major insider trading scandal in 1989, to have it repurchase the supercomputer NTT bought from Cray.[94]

By late 1986, it was clear that the Japanese government was not taking U.S. concerns seriously; 80–90 percent discounts off list prices continued and U.S. firms were not notified of government plans to procure machines. After negotiations among the USTR, Commerce and State Departments, they decided to have an inquiry into Japanese procurement under section 305 of the 1974 Trade Act and to negotiate with Japan on the issue in the Market Oriented Sector Specific (MOSS) talks. From the beginning, the U.S. government made it clear that it wanted an open market, not a specific number of purchases.

Negotiations did not get off to a good start. In early 1987, talks with MITI Vice Minister Kuroda Makoto were abruptly adjourned after a lunch meeting in which Kuroda allegedly stated that the United States would have to nationalize Cray or merge it with other larger U.S. firms in order for it to survive in today's world of large vertically-integrated firms, and that no matter how much the United States tried, it would not be able to sell supercomputers in Japan.[95] On 26 March 1987 *The Washington Post* printed a copy of a U.S. Embassy cable regarding this alleged Kuroda statement, which Kuroda immediately denied.[96] Whether or not Kuroda really said this, his sentiment is prevalent in Japanese language documents that talk of Cray's dependence on Japan for memory chips and suggest that Cray will be overwhelmed by Japanese competition in the next few years.[97]

The Japanese government responded immediately to the article about Kuroda, announcing that NTT would buy another Cray. NTT, which as of 1985 was officially being "privatized," said that the government pressured them to make this purchase to ease U.S.–Japan trade friction.[98] This Cray was also resold to Recruit.[99] MPT (Ministry of Post

[94] Ibid.; *Nihon Keizai Shimbun*, 6 March 1989.

[95] "Supercomputer Bout," *Business Tokyo*, April 1990, 34; author's interview of a former USTR official, 18 September 1990.

[96] *Nihon Keizai Shimbun*, 27 March 1987.

[97] See Kawabata, *Kompyuta Gyokai ga Abunai*, 123–8; *Asahi Shimbun*, 29 April 1987; *Nikkei Sangyo Shimbun*, 8 September 1989; author's interview of a general manager of Fujitsu's Marketing Department, 11 January 1991.

[98] *Nihon Keizai Shimbun*, 27 March 1987.

[99] *Nihon Keizai Shimbun*, 2 March 1989. Recruit paid a 5 percent premium on both of these machines over what NTT had paid Cray; *Nihon Keizai Shimbun*, 2 November 1988.

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and Telecommunications) Minister Nakayama explained in a Diet committee that NTT's purchase and resale of a Cray to Recruit "was at a time when, as a policy to help U.S.–Japan trade friction, we were searching for someplace [that would take the supercomputer off our hands]."[100] Nevertheless, U.S. pressure did help to blunt Japan's supercomputer policy.

At the same time as NTT's announcement, the Japanese government was scrambling to get an emergency budget approved to show the United States immediate action. Even before publication of the alleged Kuroda statement, Japan knew the United States was stewing not just over supercomputers but also semiconductors. President Reagan had slapped tariffs on some Japanese products that use semiconductors in April 1987. In March, MITI Minister Tamura told Prime Minister Nakasone that government purchases of a couple of Cray-2s would be very useful in alleviating trade friction.[101] A former U.S. government official closely involved in the semiconductor and supercomputer negotiations said that he received several calls from Japanese government officials asking him if the U.S. would back off the idea of putting tariffs on products that use semiconductors if the government bought some more supercomputers.[102]

In October 1987, after the emergency budget was approved, MITI's Agency of Industrial Science and Technology and the Tokyo Institute of Technology (TIT), a public institution, announced that they would each buy an American supercomputer. The government decided to purchase one Cray Research machine and one ETA, not for market reasons but because they felt CDC, the parent of ETA, might complain if only Cray machines were purchased.[103] The bidding was formally open, but Japanese companies could not win these bids, because the emergency budget was approved to alleviate U.S.–Japan trade friction.[104] A MITI official acknowledged that TIT's purchase of an ETA machine totally contradicted the principle of free trade that the U.S.–Japan agreement was to provide.[105] The purchase underscored the extent to which government procurement is an instrument of trade

[100] *Nihon Keizai Shimbun*, 2 November 1988.

[101] *Nihon Keizai Shimbun*, 29 March 1987.

[102] Author's interview, 18 September 1990.

[103] Utsumi Ichiro, *San Nen Go no Kompyuta Gyokai, Gekihen no Seriyoku Chizu* (The Computer Industry in Three Years, A Map of the Rapidly Changing [Corporate] Strength) (Tokyo: Besto Bukku, 1989), 20–21.

[104] *Nikkei Kompyuta*, 26 March 1990, 98; *Nihon Keizai Shimbun*, 8 March 1988.

[105] *Nikkei Sangyo Shimbun*, 20 October 1987.

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policy. With these two purchases the Japanese government felt it had fulfilled its promise to buy foreign supercomputers.[106] The U.S. government in contrast saw it as two token purchases, not the competitive bidding process it was asking for. CDC's late delivery of its supercomputer, along with the fact that its machine has never operated at the speed it promised, hurt the U.S. case.[107]

A formal agreement between the two countries was finalized in summer 1987 requiring that government institutions give public notice of their intentions to procure a machine. The agreement did not deal with the discounting problem for several reasons. U.S. government officials involved in the negotiations say that the U.S. administration did not support an agreement with the Japanese government on pricing, because they felt that if Japan wanted to forego superior U.S. machines or to dump their machines at below cost prices, they would only be hurting themselves. The U.S. government also knew that it would be difficult to criticize Japanese supercomputer makers for discounting when IBM was actively discounting its mainframes for Japanese universities. And there was a concern that European countries would object if the United States tried to limit discounting on sales to third countries.

The agreement was not effective. Since Japan's market was now formally open and U.S. makers were notified when public procurements would be made, they had to make bids (a costly process) or otherwise look like they were not trying. But these bids were ineffective, because Japanese makers were still using heavy discounts, selection did not have to be based on actual performance, and Japanese universities preferred Japanese machines because of long-standing ties with the companies. Indeed, according to a long-standing relationship between firms and universities, Tokyo and Hokkaido Universities have always been reserved for Hitachi products; Kyoto, Nagoya, and Kyushu Universities for Fujitsu; and Tohoku and Osaka Universities for NEC equipment.[108] "It's incredible just how thick Fujitsu, Hitachi, and NEC are with the government," says Hiromasa Yazaki, manager of Cray

[106] Utsumi, *San Nen Go no Kompyuta Gyokai*, 21.

[107] *Nikkei Sangyo Shimbun*, 27 April 1988 and 21 December 1988; *Nikkei Kompyuta*, 26 March 1990, 98–9. CDC's withdrawal from the supercomputer business in 1989 only exacerbated this problem.

[108] Utsumi, *San Nen Go no Kompyuta Gyokai*, 28; author's interview of a Ministry of Foreign Affairs official closely involved in the supercomputer negotiations, 18 September 1990; also *Nikkei Sangyo Shimbun*, 15 April 1987; *Asahi Shimbun*, 29 April 1987.

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Research's sales office in Osaka and formerly an employee of Fujitsu's government-sales section. "At the very first stage of budget-making you'll find them haggling with bureaucrats over prices. I suppose it happens the world over, but when the two parties begin talking about territories—[this] university, for instance, is Fujitsu's preserve and NEC has rights to Tohoku University—that's no longer cooperation that's collusion."[109]

The 1987 agreement did accomplish one thing: it hushed U.S. criticism for a while,[110] giving Japanese makers more time to improve their competitiveness. Other than the two emergency budget purchases made before the agreement, there were none after it until the United States started new negotiations on supercomputer procurement in 1989.

The first public sector procurement after the 1987 agreement—Tohoku University's Large-Scale Computing Center's decision to purchase a supercomputer—is a good example of how the Japanese government forces firms to discount heavily. The bid was for a replacement of the Center's NEC SX-1, so it was expected that NEC would win. Cray nonetheless made a good faith bid, since the market was now officially open. The first bid was made in June 1988, with NEC offering a monthly price of ¥48 million against Cray's ¥74.739 million. Everyone expected NEC to get the bid; but instead the university asked for a second round of bids trying to get a better discount. NEC cut its bid to ¥40.1 million and Cray to ¥74.73 million. When the university asked for a third round, Cray dropped out. NEC did not win the contract until the eighth round of bids; the final price was a 70 percent cut from NEC's original bid and a 90 percent discount from the list price.[111] These low prices are of course only possible because of heavy direct and indirect government aid to the industry and because the firms are vertically integrated and can funnel mainframe and semiconductor profits to support their supercomputer business. But to Cray Research, these are "market-shattering" prices, explained Jonathan Streeter of the Department of Commerce.[112] "We don't need to make a profit on our line of supercomputers," admits Watanabe Tadashi, the major architect of NEC supercomputers. "Whatever is spun off from our supercomputer R&D helps in other information-technology fields."[113]

[109] Cited in "Supercomputer Bout," *Business Tokyo*, April 1990, 34.

[110] *Nikkei Sangyo Shimbun*, 27 April 1988, 7. Author's interview of a Department of Commerce official, 22 October 1990.

[111] Utsumi, *San Nen Go no Kompyuta Gyokai*, 26–7. NEC bid the SX-2, Cray the Y-MP-832.

[112] Author's interview, 22 October 1990.

[113] Cited in "Supercomputer Bout," *Business Tokyo*, April 1990, 34.

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The Tohoku University case is not an exception. In 1988 Hitachi won a bid to Hokkaido University's Large-Scale Computing Center but only after five rebids resulting in a discount between 80–90 percent on the system, including peripherals and software.[114] A similar case was the Japan Railways Technical Research Institute (RTRI) purchase of an NEC supercomputer in 1988. Cray was interested in the procurement but "withdrew when RTRI demanded an 80 percent discount," explained Yoshikazu Hori, president of Cray Research Japan.[115]

In addition to discounts, evidence suggests that Japanese firms are intimately involved in helping universities write their bid proposals. In the 10 April 1989 *Kanpo*, a publication where the government announces its procurement plans, the proposals by Nagoya and Kyushu Universities were exactly the same. Japanese newspapers immediately reported this "coincidence," and the industry became concerned saying, "this will rub the USTR the wrong way."[116]

By early 1989 the United States, realizing that the agreement was not having its intended effect, started to consider targeting supercomputers under Super 301 of the 1988 Omnibus Trade and Competitiveness Act. This act required the USTR to declare which countries unfairly restrict the sales of U.S. goods and services. Under the so-called Super 301 provision of the act, the U.S. trade representative was to investigate such nations and negotiate with them to resolve the problems; if the obstacles were not removed, sanctions were to be instituted.

Trade friction between the United States and Japan worsened in April 1989, when NEC announced Japan's first 4 CPU machine, which has a theoretical peak speed of twenty-two gigaflops, far faster than any other. Soon thereafter CDC withdrew from the supercomputer business and the U.S. competitive position deteriorated. When CDC withdrew, MITI scolded NEC, "Why are you irritating the U.S. at a time when they are thinking about invoking Super 301 against Japan?"[117] NEC tried to rectify its mistake by announcing it would use more U.S. semiconductors in its supercomputers to help alleviate U.S.–Japan friction over supercomputers.[118] It did not work. In late May 1989 the U.S. government targeted Japan under Super 301, announcing that supercomputers, timber products, and satellites would be the focus

[114] *Nikkei Kompyuta*, 26 March 1990, 96.
[115] *Business Tokyo*, "Supercomputer Bout," April 1990, 30.
[116] *Nikkei Sangyo Shimbun*, 16 May 1989.
[117] *Nihon Keizai Shimbun*, 23 April 1989. Also in *Nikkei Sangyo Shimbun*, 19 April 1989.
[118] *Nihon Keizai Shimbun*, 28 April 1989.

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of the negotiations. This time the U.S. government made clear that it wanted to deal with the heavy discounting of supercomputers. Right after the U.S. announcement, MITI gave the makers administrative guidance to keep their supercomputer discounts under 50 percent, although bigger discounts on mainframes were okay.[119]

The first public sector supercomputer procurement after these negotiations began (but before they were concluded) was the purchase of a Fujitsu machine by the National Astronomical Laboratory to replace its existing Fujitsu. The only bidder was Fujitsu, which was careful to keep the discount on the supercomputer within the 50 percent limit. But it gave the overall sale, which included various equipment, a 60 percent discount by discounting the mainframe parts of the system more heavily.[120] Soon after, in early December 1989, Fujitsu won a bid for the Japan Atomic Energy Research Institute (JAERI) with a 25 percent discount off of its list price, a level that the government suggested would allow the firms to escape U.S. displeasure.[121] But this and subsequent smaller discounts were merely the result of Japanese companies cutting their list prices to make their discounts appear smaller. For example, in October 1989 NEC dropped the list price of its new SX-3 series machines by 35 percent; Fujitsu and Hitachi had already lowered their list prices by 20–35 percent[122] all in response to U.S. criticism that Japan's discounts constituted barriers to entering the market. When Fujitsu won the JAERI bid after lowering its list prices to give a lower visible discount, MITI Minister Matsunaga said that "Fujitsu's drop in list price is the result of the operation of competitive market forces."[123] But this 25 percent discount was in fact a 53 percent discount over the previous list price.[124] The United States complained that dropping list prices just made the discounts look smaller and was in no way a solution to the problem; but no further changes have been made.

In early 1990, as a second supercomputer agreement was still being negotiated, Tohoku University bought a Cray machine for its Fluid Dynamics Research Laboratory. Formally, this was a first installation for the lab, but the researchers had been using the university Com-

[119] *Asahi Shimbun*, 2 June 1989 and 9 July 1989; *Nikkei Kompyuta*, 26 March 1990, 98.
[120] *Asahi Shimbun*, 2 June 1989; *Nikkei Kompyuta* 26 March 1990, 98.
[121] *Nihon Keizai Shimbun*, 14 December 1989, 1.
[122] *Nihon Keizai Shimbun*, 21 October 1989; *Nikkei Uotcha, IBM ban*, 2 October 1989, 3.
[123] *Dempa Shimbun*, 6 December 1989.
[124] *Nikkei Uotcha, IBM ban*, 5 February 1990, 4.

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puting Center's NEC machine; so everyone expected NEC to win the bid. But NEC suddenly withdrew, citing government pressure aimed at easing U.S.–Japan trade problems.[125] With this gesture of good will, the Japanese government hoped to help cement a supercomputer trade agreement so that Japan could avoid being targeted under Super 301 for another year. The government also hoped the procurement would have a favorable impact on the next round of Structural Impediments Initiative (SII) negotiations scheduled soon after.[126]

This strategy worked: a draft of the agreement was finalized in late March, just in time to encourage the U.S. not to target Japan for another year under Super 301, a decision with a 30 April deadline. The agreement was signed on 15 June 1990, a day before the USTR was required to make a recommendation regarding sanctions on products such as supercomputers that had been listed under the 301 case a year earlier. "There was a consensus among the Japanese ministries to do the agreement to protect the U.S.–Japan relationship. SII did not go well. Trade figures were bad. It was crisis management. The United States threatened retaliation under Super 301; without that threat, many ministries would not have gone along," explained a Ministry of Foreign Affairs official.[127]

The primary difference between the 1987 and 1990 agreements is that the latter requires that real world performance criteria, not just theoretical peak performance data, be used and that discounts be limited. In this regard, the agreement is an improvement. But virtually everyone agrees that it is also seriously flawed. First, the agreement may very well strengthen the Japanese supercomputer makers. MITI and the firms are happy with the agreement, because for the firms to become competitive, it is better for them not to have to discount their machines so much. "Because discounts are only 20–30 percent now, the firms make more money," explained a Ministry of Foreign Affairs official closely involved in the negotiations.[128] Before the agreement was signed, a spokesman for a maker said, "there would be nothing better for us than to be able to sell our supercomputers at list price."[129]

[125] *Nihon Keizai Shimbun*, 3 February 1990 and 24 July 1990.

[126] *Nihon Keizai Shimbun*, 3 February 1990.

[127] Author's interview of Kawamura Yasuhisa, assistant director, Second North American Division, Ministry of Foreign Affairs, who was involved in the negotiations, 18 September 1990.

[128] Ibid. This same sentiment was strongly expressed in an article on supercomputers and the agreement in one of Japan's major computer industry magazines, *Nikkei Kompyuta*, 26 March 1990, 97.

[129] Utsumi, *San Nen Go no Kompyuta Gyokai*, 37.

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Indeed, the agreement, by limiting discounts, gives the firms more return on their investment, which they are plowing into R&D that will come back in the form of more sophisticated machines in the future.

A second major problem with the agreement concerns reciprocity. The agreement was intended to remedy Japan's violation of the GATT procurement code. U.S. government supercomputer purchases also follow this code, which exempts defense purchases. The United States is not violating the code, but since most U.S. government supercomputer purchases are for defense purposes, Japan argues that this is a barrier to their sales in the United States. Watanabe Tadashi, chief architect of NEC's supercomputers, complains that "The U.S. government hasn't bought a single Japanese supercomputer; now you tell me who's being unfair."[130] Fujitsu Chairman Yamamoto Takuma agrees that the United States is unfair in calling on the Japanese government to buy U.S. supercomputers when the U.S. government does not buy Japanese machines: "We do not intend to crush them under our feet; nothing can be gained by doing that. That is why Fujitsu has always tied up with a [U.S.] partner, and we will continue this strategy in the future."[131] The unwillingness of the U.S. government to make the procurement agreement with Japan reciprocal is clearly a major weakness undercutting the U.S. position. Moreover, the U.S. government also monitors private sector purchases of Japanese supercomputers for dumping violations, undoubtedly contributing to the fact that only four Japanese supercomputers have been sold in the United States—two NEC's to an NEC-related research consortium and two Fujitsu machines to a U.S. subsidiary of a French conglomerate. Still, performance evaluations suggest Japanese machines lag behind in the software applications used by U.S. defense-related laboratories. Indeed, in interviewing a couple dozen U.S. supercomputer experts, only one—at Lawrence Livermore Laboratory—expressed an interest in having his institution purchase a Japanese machine, saying that the U.S. should take a serious look at Japanese machines to understand one's competitor,

[130] *Business Tokyo*, April 1990, 32. NEC has lost two bids to U.S. agencies, one in September 1992 to NASA, which was seeking a replacement for its Cray-2 supercomputer. According to NASA, Cray Research won the bid "because of the clearly superior capabilities of [Cray's] Y-MP C-90 and Cray's history of providing NASA with reliable, cost-effective facilities over the years." "NEC Loses to Cray in NASA Bid," *The Daily Yomiuri*, 5 September 1992; *Nihon Keizai Shimbun*, 14 July 1992; *Nikkei Sangyo Shimbun*, 7 September 1992.

[131] In an article that Fujitsu Chairman Yamamoto Takuma wrote for *Nikkei Kompyuta*, 1 January 1990, 103.

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not because he thought them superior to United States machines.[132] And Lawrence Livermore Laboratory in early 1993 announced it was buying a British supercomputer, the innards of which are apparently made by Fujitsu,[133] showing that United States public labs will buy foreign.

The Japanese government and firms not only see the lack of reciprocity as a problem, they also argue that the U.S. government has a double standard on discounts. IBM Japan has long given heavy discounts to Japanese public institutions to make inroads into that market. Yet the U.S. government, they argue, is complaining about Japanese dumping of supercomputers, because Cray Research cannot afford to sell its machines at such low prices.[134] The United States double standard was clearly evident in 1992; there were no objections to Cray's donation of a Cray X-MP system to Lawrence Livermore National Laboratory to support its National High School Supercomputer Program; yet just around the same time, Fujitsu, due to pressure from Congress, withdrew its offer of a free supercomputer to a Colorado-based international consortium of electric utility organizations.[135]

A third key flaw in the agreement is that it will only benefit the United States if Japan's market is in fact open; and there is little evidence to suggest that this will occur, at least not until Japanese supercomputers are fully competitive. In most high tech markets where the U.S. is internationally competitive, the United States has a large trade deficit with Japan. In 1990, for example, the United States had a $22.3 billion deficit with Japan in computers and telecom equipment.[136] Thus, competitive U.S. products do poorly in Japan, even in areas where Japan's markets are officially open. With a supercomputer market that appears only officially open, U.S. companies have to bid whenever a procurement proposal is announced, a costly process when foreign entry seems to still be artificially limited.

[132] Author's interview, 12 December 1990.

[133] Lawrence Livermore Lab bought a machine from a U.S. subsidiary of Meiko Scientific, a British firm, *Financial Times*, 8 March 1993; Author's interview of a U.S. supercomputer expert in Japan, 7 April 1993.

[134] Utsumi, *San Nen Go no Kompyuta Gyokai*, 39.

[135] "Latest Crays on Campus," *Computerworld*, 4 February 1992, 30; Richard Gephardt wrote the Japanese Embassy and Bush's science adviser, Alan Bromley, opposing the gift. John Markoff, "Fujitsu Drops Offer on Computer," *The New York Times*, 5 November 1992.

[136] Carla Rappaport, "The Big Split, Japan vs. the U.S.," *Fortune*, 6 May 1991, international ed., 27.

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Even if the agreement were perfect, however, it would be hard to overcome the effects of past preferential procurements. Public institutions with Japanese supercomputers in place would normally wish to replace their machines with an upgraded model from the same maker. Thus, public institutions making first installations are the only ones likely to consider foreign machines. The agreement's usefulness to U.S. manufacturers is also limited because the Japanese government can cut procurements by restraining budgets if it so desires. So far, the higher prices have led to fewer public procurements—declining from twelve, ten, and nine machines in 1986, 1987 and 1988 respectively, to five, two, four, and five in 1989, 1990, 1991, and 1992, respectively. And the government is planning to buy only five machines in 1993.[137] Thus the large increase in sales of foreign machines that the United States hoped for is not forthcoming. Still, government purchases of foreign machines have increased since 1988, an improvement even if the overall market is declining. The most recent data show that since the 1990 agreement Cray has won three of eleven public procurements (Table 4).

The Japanese and U.S. government initially touted the 1990 agreement as a success. But problems surfaced in July 1992, when Cray Research lost a bid to NEC for an installation at the National Institute for Fusion Sciences. Cray lodged a formal complaint to the Japanese government about several problems with the procurement process. First, the Cray machine more than met the institute's minimum requirements, which were made public in advance; but it far exceeded the maximum requirements, which are not allowed to be released. NEC's machine also met the minimum and just exceeded the maximum requirements. Since Cray's price was about 10 percent higher than NEC's, the Japanese maker won the bid. Cray and others argue that either NEC received information about the maximum requirements or, more likely they say, the institute for some reason decided it wanted an NEC and set its maximum requirements so that NEC "coincidentally" would just meet the maximum specifications. Cray people say that had they known the maximum requirements, they could have offered a cheaper system that would still have exceeded NEC's performance.[138] Cray

[137] The number of 1990, 1991, and 1992 public purchases are those covered by the 1990 agreement. For more details on this, see note 2 in Table 4. All of the 1993 purchases will be covered by the 1990 agreement. *Nihon Keizai Shimbun*, 29 October 1992.

[138] Interview with Kato Takehiko of Cray Research Japan, 11 December 1992; *Nikkei Kompyuta*, 27 July 1992, 54–56 and 2 November 1992, 22; Neil Gross, "Why Cray's Number Cruncher Got Crunched in Japan," *Business Week*, 2 November 1992, 154; *Nikkei Sangyo Shimbun*, 10 October 1992.

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also complained that the procurement rules regarding selection of a machine based on current real world performance criteria were broken, because NEC won even though a key part of its system was not yet complete. Rather, the institute accepted NEC's promise that it would be ready by installation time in March 1993.[139] The USTR issued a statement noting "serious concerns" when the Japanese government rejected Cray's complaint.

Because of the complexities of the procurement process, it is difficult to evaluate these kinds of complaints. Nonetheless, Cray's complaints were supported by benchmark scores leaked to *Nikkei Kompyuta*, an industry journal, and confirmed by sources knowledgeable of the bid.[140] Clearly, trade friction in areas such as supercomputers cannot be solved solely with a procurement agreement. U.S. trade policy was successful in pressuring the Japanese government to buy some foreign machines and in preventing the dumping of Japanese machines in the United States. It helped stop the erosion of Cray's market share (and thus its capacity to invest to develop more advanced machines) that would have occurred absent U.S. policy. But the policy dealt only with the symptoms—the discounting, not with the disease—the underlying structural differences that enable Japanese firms to heavily discount prices and lose substantial amounts of money over long periods of time to gain market share. Thus, this policy is likely to have only short-term benefits. And major barriers still remain in the public sector market: Cray's share in Japan's quasi-open private sector market—21 percent—far surpasses its share in the public sector—10 percent (Table 4). The Japanese government announced in spring 1993 that it would spend some ¥200 billion ($1.74 billion) to buy supercomputers as part of its 1993 economic stimulus package. The government says these procurements will be made in open bids, which should boost Cray's sales there. Of eleven planned purchases, the government had made four as of the end of November 1993, two Japanese and two American supercomputers.[141]

It is difficult to estimate how many foreign supercomputers would have been purchased in an open market. While it is safe to conserva-

[139] The autotasking function was not complete. *Nikkei Sangyo Shimbun*, 14 July 1992 and 8 October 1992; *Nihon Keizai Shimbun*, 8 October 1992.

[140] *Nikkei Kompyuta*, 27 July 1992, 54–56; *Business Week*, 2 November 1992, 154; author's interview of Neil Gross at *Business Week*, based on his interviews with scientists knowledgeable about the deal, 10 December 1992.

[141] *Yomiuri Shimbun*, 19 March 1993; *Daily Japan Digest*, 30 November 1993, 5.

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tively assume that foreign machines were superior to Japanese machines through 1986 (most would say up until the present), it is impossible to know whether Japanese users would have been willing to pay substantially more to obtain a better foreign machine, even if the market had been open. For the sake of argument, however, if one makes the somewhat tenuous assumption that users would have been willing and able to pay the higher prices for a foreign machine, a conservative estimate is that in an open market at least twenty-eight private and twenty-four public institutions would have bought Cray machines up through 1986.[142] Including the fact that these government and private institutions have since (through 1992) replaced their earlier machines and/or added eighteen and twenty-four new machines respectively, the number of Crays that would have been procured was conservatively speaking ninety-four. Cray's X-MP series available at the time was priced between $7 and $20 million, with the higher models selling the most. If the ninety-four machines are conservatively estimated to cost an average of $12 million each, this would have meant at least some extra $1.128 billion in revenue for Cray. Given that Cray invests about 15 percent of revenues in R&D each year, this would have meant some $169.2 million in extra R&D, which could have helped fund at least another generation of supercomputers. If one converted these numbers to current dollars and used more realistic higher prices for the replacements made in recent years, the estimate would be even higher. More importantly, the Japanese supercomputer industry would not have been launched, so Cray would not have had any competition.[143]

Conclusion

This article suggests that several factors were key to Japan's effort to nurture a domestic supercomputer industry. These include government support through Buy Japan public procurement policies and state-sponsored R&D projects; corporate support through intragroup favoritism in procurement and cross-subsidization of their supercomputer

[142] This conservative estimate includes all public and private purchases of domestic supercomputers up through 1986; if one included data on clear-cut *keiretsu*-related purchases after 1986, for example, auto firms' purchases of domestic machines despite Cray's clear superiority in this area, the number would be even higher. *Nikkei Uotcha, IBM ban*, 30 April 1990, 21–24; *Nikkei Kompyuta*, 27 January 1992; data from various magazine and newspaper articles.

[143] It has cost Cray Research a total of $158.1 million to develop their Cray-1, Cray-2, and Cray X-MP and Y-MP models; the C90 machine was estimated to cost $100 million. *The Japanese Public Sector*, 2–3.

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divisions; a financial system that allows companies to work for the long term; and a way of valuing industries that emphasizes their long-term value to the economy more broadly rather than their immediate impact on the bottom line of the firms in the industry.

Japan has long viewed industries differently from the West, which tends to value an industry based on its ability to produce a maximum profit for a given investment. The Japanese have generally tried to evaluate intelligently which industries they need to increase their standard of living and economic security over the long term and then to figure out ways to make the investment necessary to assure the health of those industries. Profitability is not ignored, but looked at in a broader sense—not just at the industry's profits but also at how the industry contributes to the success of others and to the development of the skills, knowledge, and training deemed important for future industries. Japan has also historically valued the promotion of producer-oriented industries having products it would otherwise have to depend on foreign firms for.

Initially, Japanese firms did not want to enter the supercomputer industry, thinking the market too small. But when the government offered to fund a cooperative R&D project, they went along. As they proceeded, they realized that supercomputers were important not because they would be immediately profitable, but because their technology could be used in other related areas, such as mainframes and telecommunications. Making the superfast chips necessary for supercomputers would drive their semiconductor divisions and the industry more broadly forward. And access to domestic leading-edge supercomputers would assure them the tools necessary to boost the competitiveness of other industries that increasingly depend on supercomputers for design and simulations, such as autos, aerospace, pharmaceuticals, construction, and semiconductors. In short, the industry would have positive spillovers both within these huge electronics conglomerates and onto the broader economy as a whole.

The use of Buy Japan policies to help create a comparative advantage in supercomputers was particularly potent, since the government is a primary purchaser of such big ticket items. As Japan came under strong U.S. pressure in the mid-1980s, Japan agreed to open up public procurement of supercomputers. Basically, Japan decided to negotiate on supercomputers in order to ease growing U.S. pressure on products with much bigger markets, such as autos and semiconductors. This case suggests that these negotiations, which took some six years, were

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used in part to delay inroads by foreign firms into the Japanese market. This strategy worked well to give the domestic makers a foothold. Indeed, because of the difficulty in changing to computer systems with different standards, preferential procurement in the early years has an important impact on present and future procurement as firms tend to replace machines with the same brand. Helping domestic makers and thereby denying foreign firms revenues they would have received in an open market reduced the funds foreign firms could spend on R &D, cutting both their immediate and future world market share. Of less, though still significant importance, the *keiretsu* system also helped protect the market for Japanese makers. A conservative estimate shows that Cray was denied at least $1.128 billion in revenue because of Japan's public and private favoritism towards inferior domestic machines through 1986.

Public and private procurement practices are not the only factors critical to the emergence of Japan's supercomputer industry. A financial system that has supplied firms with relatively stable, low cost capital and that frees them from worries about takeovers or sudden sales of their stock has enabled Japan to develop huge electronics conglomerates that are vertically integrated and diversified across related areas such as semiconductors, telecommunications, and consumer electronics. The result is that Japanese firms do not need to make money in their supercomputer divisions, and analysts believe they are still losing money in this area. Nor do they need to make high profits to satisfy their stable stockholders: Fujitsu, Hitachi, and NEC have profit rates (profits as a percentage of revenues) of only 2–4 percent a year, a level that would drive a U.S. firm out of business. In short, Japanese firms seem to be better organized to deal with the high risks and costs of nurturing new technologies and high tech products. A lack of similar institutional arrangements makes it difficult for one-product firms such as Cray Research to compete over the long term with Japan's electronics giants that cross-subsidize their supercomputer divisions. The corporate structure of Japan's electronics conglomerates, together with government-sponsored cartels, cooperative R&D projects, and various direct and indirect subsidies, give Japanese makers advantages in international competition. The fact that much U.S. research on advanced computing is done in the public domain and that Japanese firms are financially equipped to access this free knowledge only serves to tilt the playing field all the more in Japan's favor.

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While strong U.S. pressure over the past few years on supercomputers has resulted in increased sales of foreign machines in Japan, these may be short-term gains. It does not mean that Japan has become a system primarily based on free markets. Clearly, Japan's government and corporations use various policies and institutions to handicap firms' entry into the market and to promote Japanese firms. Strategic trade and industrial policies, though less interventionist than in the 1950s through 1970s, are not a thing of the past.

There are numerous broader implications of Japan's strategic trade and industrial policies for the United States. Most importantly, the U.S. government needs to decide if it wants to defend strategic industries against the market share erosion resulting from these policies. If it wants to, it needs to create a comprehensive plan for doing so. Any such effort has to deal at minimum with the core structural weaknesses of the United States made clear by this case: the different structures of Japanese and U.S. firms; the differences in the financial systems of the two countries; the differences in the ways the United States and Japan view the importance of the "food chain" linkages between parts makers and systems makers; the pattern of preferential procurement by firms in the *keiretsu*; and the lack of state institutions and tools for and experience in dealing with complicated trade problems in the United States.

The supercomputer case shows the complexity of the problems the United States faces. U.S. firms have dominated the world market since the industry began in the mid-1970s and even today are producing superior machines for most applications. But unlike the Japanese makers who enjoy mutual shareholding arrangements, U.S. firms are tied to the stock market and simply cannot afford to lose money over long periods of time to gain market share. Cray Research has invested heavily (about 15 percent of revenues) in R&D, yet because of imperfect capital markets and other factors it is unable to borrow the huge sums of money necessary to counter the discounting and investment strategies of Japan's multidivisional firms. Nor will Cray's shareholders put up with returns of some 2–4 percent a year.

The way the United States views industries and interfirm linkages also hinders its competitiveness. The U.S. market system, which induces firms to produce only those goods they can get a reasonable return on, is the most efficient for most products. But it is increasingly clear that in cases such as semiconductors, the development and production of which involve knowledge and skills that have spillovers onto

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other important areas, firms lacking state and corporate institutional support underinvest or bail out of the market altogether. Because of low profits in memories, U.S. makers largely abandoned that industry in the 1980s, resulting in Cray Research's dependence on Fujitsu for chips critical to its competitiveness. While some U.S. makers have reentered this industry (with help from the U.S. government in Sematech), such an exit would never have occurred in Japan, where there is a keen sense of the interdependencies of these strategic technologies. Either the firms or the state (most likely both) would have gotten together and arranged somehow to make the needed parts domestically, with the government and the firms collectively bearing the cost. And well entrenched U.S. policies and laws, such as the Antimonopoly Law and the Glass-Steagal Act, have historically prevented the development of huge electronics conglomerates, as well as the close bank-company and interfirm relationships important to nurturing strategic technologies that can survive not just in government-dominated market niches but also in more price/performance-sensitive commercial markets.

Trying to create a level playing field given these structural differences is an enormous undertaking. Even the seemingly straightforward task of countering the Japanese government's Buy Japan policy has turned out to be far too complex to be resolved through a procurement agreement. The U.S. government complained that the bidding system was not transparent, so the Japanese government started publicly announcing the bids yet bought no foreign machines. Then the United States complained about discounting, resulting in the 1990 agreement which boosted prices, but this too served to provide Japanese companies with higher profits on their supercomputers, something MITI and the makers welcomed. Results have been disappointing, even though the U.S. government has spent substantial political capital as well as over six years negotiating these agreements, an invaluable amount of time during which Japanese makers have boosted their competitiveness and gained many all-important first installations. While U.S. trade policy undoubtedly helped Cray, it is only a short-term solution. At the end of the day, Cray still needs to be able to compete against firms that do not need to make profits on supercomputers.

Finally, the U.S. government cannot long defend a policy of requiring that Japan open up its public market for supercomputers without showing that its own is open. The recent purchase of a British supercomputer by the Lawrence Livermore Laboratory is an important step

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in this direction. Most supercomputer experts agree that even if the U.S. market were completely open today, few Japanese machines would be purchased unless discounted heavily. But it is clear that Japanese firms are catching up fast; the U.S. government needs to think now about how it will respond if, as current trends suggest, Japanese firms overtake them in this area. This pattern of using state and corporate institutions and policies to create comparative advantage is not new; it has occurred in areas such as color television, autos, machine tools, steel, and memory chips. For industries the U.S. government and businesses deem strategic to the nation's long-term economic well-being, it is time to acknowledge the pattern and do something to prevent its reoccurrence.*

* Some of the research presented in this article was done initially for a contract report, "Japanese Policies for the Supercomputer Industry," for the Office of Technology Assessment of the U.S. Congress, 1991.

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Nationalism and Foreign Policy in Ukraine

CHARLES F. FURTADO, JR.

In the fall of 1991, the world witnessed the final chapter in the momentous events that had swept Eastern Europe since the revolutions of 1989: the political disintegration and collapse of the Soviet Union. It is difficult to overestimate the significance of this culminating transformation. Not only did it introduce a further degree of uncertainty into a region that was already experiencing decisive political and economic upheaval, it also undermined a key structural principle of the postwar international system—bipolarity.[1] While this latest geopolitical reformation opened up opportunities for international cooperation on the basis of shared political and economic values, it also permitted long-stifled passions to break to the surface. Many feared this dark underside of change would overwhelm the undeniable promise of the new world order.[2]

[1] For a discussion of bipolarity and its stabilizing effects, see Kenneth N. Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979) and his earlier "The Stability of a Bipolar World," *Daedulus* 93 (Summer 1964): 881-909.

[2] These issues have been most extensively addressed in the pages of *International Security*, which has carried a number of articles that have outlined potential trouble spots and suggested how these might be avoided. Among the latter have been John J. Mearsheimer, "Back to the Future," 15 (Summer 1990): 5-56; Jack Snyder, "Averting Anarchy in the New World Order," 15 (Fall 1990): 5-41; Steven Van Evera, "Primed for Peace," 15 (Winter 1990/91): 7-57; F. Stephen Larrabee, "Long Memories and Short Fuses: Change and Instability in the Balkans," 15 (Winter 1990/91):

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At the core of these pessimistic scenarios was the perceived past and potential influence of the "destructive" force of nationalism. Admittedly, the evidence against nationalism and its agents contained substantive charges: nationalist movements had undermined the legitimacy and stability of the multinational Soviet state—a dynamic that progressively weakened its unity of voice and purpose in matters of foreign policy; in their appeals to the Wilsonian principle of national self-determination, these movements had attempted to force Western leaders to choose between their professions of support for popular sovereignty and their interest in continued international stability. The fact that the state to be dismembered was a nuclear power that had proven its commitment to reducing international tensions through its concrete actions in Eastern Europe only ensured that this strategic dilemma would be particularly wrenching and potentially destabilizing. It did not go unnoticed that the successor states to the Soviet Union were headed by avowedly nationalist leaderships, unschooled in the arts of diplomacy and untested in their devotion to norms of international conduct. Given the fact that the nationalist reawakening in the Soviet Union had already led to interrepublican conflict, the relationship between nationalism and international security did not appear to be entirely promising. The internecine struggle between Armenia and Azerbaijan over Nagorno-Karabakh was only the most conspicuous example.

The sense of foreboding inspired by the collapse of the Soviet Union and the rise of national(ist) successor states was especially noticeable with regard to Ukraine. After all, Ukraine's reluctance (and later refusal) to participate in the politics of federation had scuttled successive union treaties and the hope for a unified, multinational post-Soviet state. Furthermore, in the run-up to the presidential elections and referendum on state independence that were jointly scheduled for 1 December 1991, Ukrainian leaders fulfilled many observers' worst expectations when they announced their intention to create their own national army by nationalizing Soviet forces stationed in the republic. No one act could have more dramatically illustrated Ukraine's desire to pursue its national destiny and at the same time more forcefully called attention to the destabilizing potential of the interaction between nationalism, state-building, and foreign policy.

58–91; Robert Jervis, "The Future of World Politics: Will It Resemble the Past?" 16 (Winter 1991/92): 39–73; and Ted Hopf, "Managing Soviet Disintegration: A Demand for Behavioral Regimes," 17 (Summer 1992): 44–75.

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The purpose of this article is two-fold: to examine the unsteady brew of nationalism and foreign policy; and to determine to what extent Ukraine's relationship with the outside world is dictated by a domestic agenda of nationalism. I contend that nationalism per se need not be a source of international discord; indeed, it is a necessary evil of the international system as currently constructed. Rather, the destabilizing impact of nationalism on international security arises only out of certain very specific variants of the national idea. States that exhibit such exclusive ethnic ideologies not only pursue internal policies toward national minorities that have destabilizing external consequences, but are more likely to turn their national agenda outward, justifying the incorporation of lands or irredenta through expansive definitions of the nation. Contrary to conventional wisdom, I argue that Ukrainian foreign policy is not driven by such an exclusive and expansive ideology of nationalism and is thus by itself unlikely to provoke international conflict. Finally, I briefly suggest policy strategies to prevent the radicalization of Ukrainian nationalism and its foreign policy.

Of Necessary and Unnecessary Evils

There is no escaping nationalism in the modern world. The national idea has achieved such a level of ideological hegemony that it has become an integral component of the identity of most individuals.[3] As James Mayall has persuasively argued, the impact of nationalism has been similarly fundamental on the international system.[4] Thus, it is no trivial coincidence that the primary unit of inter-*national* relations has come to be the nation-state—an organization that represents the interests of a self-conscious territorial (and in most cases, ethnocultural) community within a larger self-help system that is increasingly comprised of similarly constituted states. The rulers of these states derive their legitimacy neither from the principle of divine right nor

[3] The strength and pervasiveness of this fundamental identity, the psychological needs that it satisfies, and its implications for foreign policy are interestingly examined in William Bloom, *Personal Identity, National Identity and International Relations* (New York: Cambridge University Press), 1990. The classic statement portraying nationalism's rise as rooted in the industrialization of the modern era is Ernest Gellner, *Nations and Nationalism* (New York: Cambridge University Press), 1985. For a well argued critique of such modernization theories that attributes nationalism to sources that predate industrialization, see Anthony D. Smith, *Theories of Nationalism*, rev. ed. (New York: Holmes & Meier, 1985).

[4] James Mayall, *Nationalism and International Society* (New York: Cambridge University Press, 1990).

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from that of dynastic succession, but from the will of the people—a political community that is normally synonymous with the nation. As Eric Hobsbawm has observed, this rise of popular sovereignty was commonly tied to the expectation that the nation would henceforth be ruled exclusively by its own members; leadership by foreigners progressively took on an illegitimate character.[5]

The fact that nationalism has come to be the normative constitutive principle of the states comprising the international system has several important implications. First of all, it significantly limits the elaboration of international society by constraining the extent to which nations will seek to become interdependent. While nationalism did not create the self-help behavior typical of the international system, neither has it served to ease its effects. Second, nationalism is a double-edged sword; although it contributes to international stability by providing the prime philosophical justification for the sovereignty of the states that make up the system, it also serves as the principal political stance from which the legitimacy of these states can be challenged. Consequently, nationalism is capable of making those nation-states with ethnic minorities compactly settled on their territory vulnerable to attempted secession from within and the exploitation of irredenta from without. Thus, as far as the international system is concerned, nationalism would appear to be an inescapable and decidedly mixed blessing. Both an agent of change and a guarantor of stability, nationalism is the necessary evil with which international society must contend.

Yet the effects of nationalism are not felt solely at the systemic level. One of its most powerful means of influencing international politics is through the foreign policy of individual nation-states. The level of influence that nationalism exerts on foreign policy is obviously subject to substantial variation, as is the degree of specificity with which it defines and structures relevant policy alternatives. The immediacy of nationalism's impact also varies substantially—with direct and focused effects in some cases, indirect and diffuse in others. The agent that infuses nationalism into the foreign policy process is also subject to change; the principal actor—be it state or societal, military or civilian, elite or mass—will shift depending on the issue area and, with respect to a single issue, over the course of time.

When nationalists have control or at least a strong measure of influence over the state, nationalism can affect foreign policy formation

[5] Eric Hobsbawm, *Nations and Nationalism since 1780* (New York: Cambridge University Press, 1990).

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in several important ways. Its most overt impact is probably felt in cases where ideology all but prescribes the adoption of given external policy objectives. For example, unification nationalism would have very specific foreign policy implications, because it would encourage nationalist elites to press for incorporation of conationals through immigration or conquest. Similarly, an agenda of ethnic nationalism, which seeks to link the exercise of political, social, and other rights to a specific ethnocultural heritage, can have very definite foreign policy ramifications for nation-states that contain large and territorially compact ethnic minorities. Why? Because nationalist leaders often eschew consociational solutions to the domestic dilemmas of divided societies, they frequently resort to foreign policy as a means to resolve such disputes.[6] For example, in some cases, nationalist elites choose to expel minorities, driving those whom they cannot assimilate into the arms of the international community; in others, they prefer to negotiate with them so as to transfer sovereignty and redraw state borders in a manner more consistent with the demographic base.

Yet the effect of nationalism on foreign policy is rarely this direct and specific. Its most pervasive influence is probably its least palpable—its impact on perceptions of the outside world and its crucial role in framing the domestic debate on foreign policy. The effect of such forces are felt in every corner of polity and society, even if they do have the greatest policy impact when conveyed by elites. As it is with any ideology, nationalism provides to those who embrace it a belief system that consciously or unconsciously structures the perception of the world. Through its identification with the nation, the ideology establishes moral, pragmatic, and cognitive priorities that aid its adherents in distinguishing which beliefs are indisputable and which intolerable, which actions are acceptable and which unacceptable, which course is true and wholesome and which false and baleful, and where lies security and where danger. As it filters experience, nationalism automatically heightens the salience of certain events while downplaying the importance of others. The advantage of the ideology is that it simplifies a complex world and provides its followers with a common language and symbolism that make for easier communication. Its main disad-

[6] For more on the concept of consociational democracy, see the work of Arend Lijphart, specifically his article, "Consociational Democracy," *World Politics* 21 (January 1969): 207–25 and *Democracy in Plural Societies* (New Haven: Yale University Press, 1977). A critical assessment of this approach is put forward in Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), 566–576.

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vantage is that in simplifying reality it may skew rather than sharpen perception, leading to dangerous misunderstandings that could make international conflict more likely. Since nationalism usually operates more in interaction than in a vacuum, the risk of conflict is even further intensified as mutual misperceptions "spiral" out of control.[7]

The perceptual blinders of nationalism have an impact not only with respect to the outside world but also at home in domestic debates on foreign policy. While it is important to acknowledge that the content of nationalism plays a cardinal role in determining the breadth of the foreign policy debate, there can be no question that nationalism always and everywhere narrows the parameters of foreign policy discourse, placing into question the seriousness or patriotism of those who would stray beyond the bounds of consensus. While such limits need not lead to conflict, they do make the foreign policy process more rigid—a quality that in turn is likely to make it less adaptable to quickly changing circumstances.[8]

Yet the domestic impact of nationalism on foreign policy is by no means limited to its effects upon the perceptual parameters that guide this policy process. It also influences the formation of foreign policy by provoking the actions of outside forces—those of neighboring states or the international community. For example, a state that practices a policy of ethnic discrimination against its own minorities may trigger the intervention of one or more states to put an end to such treatment. Such actions may be engaged in unilaterally (India in East Pakistan) or multilaterally (the United Nations in southern and northern Iraq); they may involve military force (Serbia in Croatia and Bosnia-Herzegovina) or limit themselves to selective economic and political instruments (UN sanctions against South Africa, Hungarian diplomatic protests against Romania). Yet regardless of form, these foreign policy challenges are in an important sense self-inflicted, the unintended external consequence of internal nationalism.

Let us now turn to the influence that specific types of nationalism exert on the character of foreign policy. Examining these linkages allows us to determine which types of nationalism have the greatest potential to disrupt international security and which the least.

[7] See Robert Jervis, *Perception and Misperception in International Politics* (Princeton, NJ: Princeton University Press, 1976).

[8] The fact that such deliberate rigidity is not always self-defeating or conflict inducing is suggested by the discussion of strategies of precommitment and games of Chicken. See Michael Taylor, *The Possibility of Cooperation* (Cambridge, England: Cambridge University Press, 1987).

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Nationalism revolves around the belief that nationality is the most fundamental social identity and as such should be enshrined in political form through the nation-state. Thus, every nation has the right to self-determination and the duty to struggle toward the achievement of state sovereignty. In the eyes of nationalists, the state is not only seen as the lone defender of the independence and physical existence of the nation, but as the central medium through which the spiritual and cultural identity of the national community will be preserved and fully elaborated. Despite this consensus on basic goals and beliefs, nationalists continue to differ on many key issues—disputes that have important implications for the character of their respective regimes as well as for the content of ensuing foreign policy.

As many have observed, the species of nationalism largely differ according to the extent of exclusivity with which they seek to define the nation and the degree of liberalism which they are willing to countenance in giving effect to this idea. As Hobsbawm has noted, the idea of the nation has not always revolved around groups sharing a common history, language, high culture, religion, and body of folklore and customs; it has also centered on more inclusive groups that are defined more by territorial or political characteristics than by ethnic heritage.[9] Further, it is clear that nationalist movements have approached the issue of how to incorporate ethnic minorities in very different ways: some have sought to purge society of their taint, some to offer them admittance on condition of their full or partial cultural and/or linguistic assimilation, and some to allow them a measure of political and cultural autonomy with the proviso that they remain an integral component of the larger nation-state.

In general, nation-states exhibit one of four general types of nationalism: official, social, ethnic, and/or integral.[10] Because these forms are not mutually exclusive, a nation-state may display more than one type of nationalism at any one time. Not surprisingly, the most prevalent form of nationalism—official—is also the type most compatible with other variants. "Essentially based on patriotism," James Kellas maintains that official nationalism is "the nationalism of the state," a form that "encompass[es] all those legally entitled to be citizens,

[9] Hobsbawm makes this case with respect to the nation that is thought to have contributed greatly to the rise of the Age of Nationalism, France. See *Nations and Nationalism*, 18–22.

[10] The categories for this typology are borrowed and adapted from the following work: James G. Kellas, *The Politics of Nationalism and Ethnicity* (New York: St. Martin's Press, 1991), 51–54.

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irrespective of their ethnicity, national identity, and culture."[11] While it may be tempting to dismiss this brand of mass national identification as something less than nationalism, to do so would be mistaken, especially for a study that seeks to examine the influence of nationalism on foreign policy in the Soviet successor states. Every state, no matter how significant and enduring its societal cleavages, has exhibited similar forms of national patriotism.

The fact that there is a normalcy to this variety of nationalism does not make it any less an expression of the national idea. Such "everyday nationalism" has been as effective and destructive an influence on foreign policy as any of its more virulent forms.[12] After all, this is the ideology that in making the state the epitome of the nation, has served time after time as the justification for international conflict, motivating men (and increasingly women) to lay down their lives in defense of national interests. Yet the influence of official nationalism cannot be limited to the foreign policies of well established states; its effects are also felt with particular intensity among those states that are only beginning the simultaneous process of state- and nation-building. The friction between these two complex tasks often leads to tensions in the foreign policy of young states.

By creating state institutions to defend national sovereignty in the political, economic, military, and cultural arenas, nationalist elites are attempting to establish a focus for national identity that will serve as the basis for official nationalism. This process has obvious implications for foreign policy. The very act of creating a military to defend against invasion, border troops to prevent illegal immigration, customs inspectors to control trade, and a currency to undergird national economic policy sends a clear message of intent to both domestic and international audiences. While that message may be comforting to national constituencies, it may also be threatening and alienating—sometimes deliberately so—to neighboring states. By defining not only what the nation is to stand for but what and whom it is to stand against, nationalist elites pursue a foreign policy that has official nationalism at its source.

Official nationalism very rarely stands on its own; it is normally paired with and defined by more exclusive varieties of the national idea.

[11] Ibid., 51-52.

[12] My apologies to Jon Elster for adapting his phrase, "Everyday Kantianism" for my own purposes. See his *The Cement of Society* (New York: Cambridge University Press, 1990), for a discussion of this concept.

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Social nationalism, while more exclusive than official nationalism, is not rigidly so. Kellas contends that it is most characteristic of nations that define themselves "by social ties and culture rather than by common descent." Although social nationalism "stresses a shared sense of national identity, community, and culture," it also permits outsiders to "join the nation if they identify with it and adopt its social characteristics."[13] This relatively inclusive approach toward national minorities holds out the promise that the impact of ethnic nationalism can be limited in both the domestic and foreign policy spheres. It does so on two levels: by allowing minorities the opportunity to integrate into the larger society, it gives them less of an incentive to challenge what would otherwise be an ethnically biased state on the basis of their own ethnic nationalism; and by thus defusing the challenge to state stability, it also allows the majority to react less defensively or in a less ethnically exclusive fashion.

There is no certainty that ethnic minorities will agree to assimilate on terms acceptable to the majority. This raises the possibility that a failed attempt at social nationalism will lead to secessionist challenges that could complicate both the internal life of the state and its foreign policy. Attempts to defend the territorial integrity of the nation by suppressing secessionist movements could cause the state to risk international censure, sanction, and intervention, or to brave war with those who would support its territorial partition in order to advance their own irredentist or political ambitions. If secessionist bids prove successful, the redefinition of social nationalism will be required. In some cases, this will result in a move toward a course of greater ethnic exclusivism; in others, it will involve a recasting of social nationalism based on the needs of the remaining ethnic minorities. In rare cases, a third alternative is possible: the state – or an influential faction within it – will refuse to countenance its de facto partition, causing it to pursue a revanchist policy on the basis of a spurned social nationalist agenda. In such cases, social nationalism drives foreign policy in much the same way as unification nationalism – with one crucial difference. While it aggressively encourages the incorporation of irredenta by any means possible, this task must be accomplished in defiance, rather than in support, of those who have been targeted for annexation. Whatever the outcome of this action, whether it involves demographic and territorial conquest, or results in ethnic expulsions from purportedly national

[13] Kellas, *Politics of Nationalism*, 51-52.

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territories, the implications for international security are grave. While social nationalism can have quite pacific consequences for foreign policy, it can also serve as the inspiration and justification for more conflictual international strategies.

The form of nationalism that has provoked the greatest anxiety concerning its potential influence on foreign policy has been ethnic. The most exclusive type of nationalism, it has been described as "the nationalism of ethnic groups . . . who define their nation in exclusive terms, mainly on the basis of common descent."[14] Given its restrictive definition of the nation, ethnic nationalism makes it impossible for outsiders to become a national by adopting the language, religion, or customs of the ethnic majority. In a more extreme version, ethnic nationalism becomes integral nationalism, a form that is characterized by the "belief that one's nation is superior to all others, and may even be the result of biological natural selection." Demanding "absolute loyalty to the state," it is politically linked to "totalitarian, Fascist, and Nazi forms of government."[15]

What is it about ethnic nationalism and its more radical variant, integral nationalism, that worries observers concerned with the preservation of international security? A key concern is the likely external consequences of policies of internal ethnic exclusion. In this view, the creation of an ethnic underclass subject to considerable political, economic, and social discrimination not only sets the stage for sustained internal instability, but harbors the potential for external strife.

At minimum, the impact of ethnic exclusivism on foreign policy would entail the international investigation of human rights violations. Such findings could in turn be used to justify more serious sanctions and intervention against the state. Yet international actors, especially neighboring states, may not seek the approval of the international community before they act. For example, a regional competitor may choose to exploit and exacerbate the political divisions created by ethnic nationalism in order to bolster its own position of relative power, providing support to secessionist movements or to ethnic irredenta that seek its political protection and incorporation.

[14] Ibid., 51.

[15] Ibid., 75. The term "integral nationalism" in a slightly more elaborate form has also been used by John Armstrong to characterize the form of interwar Ukrainian nationalism practiced by the Organization of Ukrainian Nationalists (Banderists)—OUN(B). See John Armstrong, *Ukrainian Nationalism*, rev. ed. (New York: Columbia University Press, 1988).

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Yet the influence ethnic nationalism may have on foreign policy raises fears not only because it provokes or tempts others into actions that are potentially injurious to international security. It has a more direct impact on the foreign policy behavior of the host state. The effects of ethnic nationalism are most commonly manifested in policies toward conationals living outside the homeland. While the incorporation of irredenta is not an inevitable component of the foreign policies of ethnic nationalist states, its existence is always an issue that tempts and threatens nationalist elites. The temptation is to use the plight of outlying ethnic brethren as an instrument to further one's own domestic political ambitions or as a pretext for the aggrandizement of the nation-state in either territorial or power political terms. The threat is that the matter will be preemptively exploited by one's domestic political rivals, a consideration which makes the temptation to capitalize on the issue even stronger.

By drawing attention to the cynical realities of ethnic politics, I don't want to diminish the very real influence ethnic nationalism has in matters of foreign policy. States organized on such principles are genuinely concerned with the fate of fellow nationals beyond their borders and often do feel strongly about the incorporation or retention of lands that were historically once part of the nation. An ideology of ethnic nationalism is also a factor in the perception of the outside world, inclining state elites to view with suspicion the actions and motives of foreigners and their perceived internal agents. Indeed, this very passion makes ethnic nationalism a powerful impetus in matters of foreign policy and a formidable threat to international security.

The influence of nationalism on the formation, content, and character of foreign policy is inevitable, but the specific form and nature of this impact are still subject to manipulation. Thus, the "evil" of nationalism in matters of foreign policy is both necessary and unnecessary, a question of nature and of design.

Nationalism and Ukrainian Foreign Policy

In order to determine the impact of nationalism on foreign policy in Ukraine, it is first necessary to delineate the type of nationalism prevalent in this second largest of the successor states to the Soviet Union. The great fear attending the downfall of the Soviet empire was that nationalist movements in coming to power would embrace a highly exclusive form of ethnonationalism that would seek to deny ethnic

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minorities their political rights as well as any meaningful equality of opportunity in the social and economic sphere. This ominous scenario has not yet come to pass in Ukraine. To the contrary, Ukrainian elites, both in government and opposition, have adopted an approach of social nationalism that has studiously sought to avoid exclusive ethnic criteria as a condition of citizenship or of economic and social advancement. Although the interests of the Ukrainian community have increasingly come to take precedence and its national language and culture have been given official status and a greater measure of government backing, these initiatives have not been pursued to the exclusion of political equality and cultural pluralism for Ukraine's national minorities. In this view, the Ukrainian nation has been interpreted as including all its residents, not just those of ethnic Ukrainian descent.[16]

This species of nationalism has come to predominate in Ukraine for several key reasons – the most pressing being the demographic balance that exists in the republic. Ukraine is home to a number of compactly settled minority populations. The Russians predominantly residing in the republic's eastern and southern oblasts, including the Crimea, number some 11.4 million and account for 21.1 percent of the total Ukraine population of 52 million. On the western frontier in Transcarpathia, there are also several significant settlements of ethnic minorities, the most important being the Ruthenians, Hungarians, and Romanians.[17] Finally, Ukraine has a small Jewish population of approximately 486,000; predominantly urban, the majority of Ukrainian Jews reside in the capital, Kiev.

[16] For a more pessimistic interpretation of ethnopolitics in Ukraine, see Abraham Brumburg, "Not So Free at Last," *The New York Review of Books*, 22 October 1992, 56–64.

[17] Hungarians in Ukraine number 163,000 and Romanians, 135,000. Ukrainians account for 72.7 percent of the population for a total of 37.4 million. These figures are drawn from Mykola Ryabchuk, "Two Ukraines?" *East European Reporter* (July–August 1992): 21. According to Alfred A. Reisch, there are approximately 600,000 Ruthenians in Transcarpathia, which would make them the largest ethnic group (47.7 percent) in an *oblast* of 1,258,000 residents. There has been some controversy over whether Ruthenians can be considered a separate Slavic people, distinct from Ukrainians. For the purposes of this article, it is less important to judge the intellectual merit of these claims than to note the existence of Ruthenian political movements with sufficient political support to prod Kiev into making their claims for cultural and territorial autonomy a subject of negotiation. For an assessment of regional politics in historical context, see Reisch, "Transcarpathia's Hungarian Minority and the Autonomy Issue," *RFE/RL Research Report* 1 (7 February 1992): 17–23. The question of whether Ruthenians constitute a separate Slavic nation is taken up by Paul Magosci in his *The Shaping of a National Identity: Subcarpathian Rus', 1848–1948* (Cambridge, MA: Harvard University Press, 1978). For another view, see Orest Subtelny, *Ukraine: A History* (Toronto: University of Toronto Press, 1988), 458–9.

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Yet while Ukraine's ethnic heterogeneity as well as the territorial concentration of its minorities have encouraged a social nationalist approach, it must be underscored that these factors alone were insufficient to produce this felicitous result. A broad array of cultural, political, and social forces were also essential. For example, one of the key issues of Ukrainian politics during the Gorbachev period concerned, "Who is Ukrainian?" The Communist Party of Ukraine (CPU) attempted to make this an issue in an effort to shore up support for its continued political rule. Branding *Rukh*—the People's Movement of Ukraine for Perestroika—as the reactionary bearer of ethnic nationalism, the CPU sought to raise fears that the opposition, once in power, would support policies that sponsored the forced Ukrainianization of national minorities. *Rukh*, of course, flatly denied such an aim, pledging its strong support for the cultural rights of ethnic minorities in Ukraine and stating its categorical rejection of any state-sponsored discrimination on the basis of ethnicity. The movement's broad definition of Ukrainian nationality was evident in its earliest programmatic statement, in which it argued that the movement was

> against ignoring the national interests of Russians or representatives of other nationalities, which . . . live on the republic's territory. They must have the genuine right to open schools or classes, with instruction in their own languages; to create societies of compatriots; to form associations; to have their theaters and press; and to propagate the values of their peoples.[18]

Regardless of the sincerity with which these positions were originally advanced, this debate succeeded in having a genuine impact on the direction of ethnic politics in Ukraine. By narrowing the limits of acceptable nationalism, it placed exclusive conceptions of Ukrainian nationhood beyond the pale of political respectability and mass support.

The political consensus surrounding social nationalism was consolidated by the most unlikely of events, the August 1991 coup. In the aftermath of the failed putsch, a faction of the Ukrainian party leadership led by Leonid M. Kravchuk seized the ideologically disreputable, but politically potent bandwagon of Ukrainian nationalism in a bid to salvage their political careers. An equally important political development was that the highly diverse opposition headed by *Rukh* allowed them to do so, refusing to turn the campaign for independence and

[18] This quotation from the Draft Program of *Rukh* can be found in Charles F. Furtado, Jr. and Andrea Chandler, eds., *Perestroika in the Soviet Republics* (Boulder, CO: Westview Press, 1992), 232.

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the Ukrainian presidency into a partisan battle over who had earned the right to lead the nation by having first championed Ukrainian nationalism. By allowing party leaders into the big tent of Ukrainian independence, *Rukh* simultaneously split and coopted a political force that could have erected formidable obstacles on the road to Ukrainian statehood. By doing so, they pacified the fears of ethnic minorities, particularly the Russians, who in observing the participation of leading party elements were assured that the aims of Ukrainian nationalism would not veer toward extremist exclusion. Thus, for all the controversy surrounding the depth of Leonid Kravchuk's attachment to the sovereignty of the Ukrainian state, his prominence in the drive to ratify state independence most likely contributed to its strong support among Ukraine's ethnic minorities.[19]

The final reason that Ukrainian nationalists did not embrace an agenda of ethnic nationalism was their fear that such a formula would alienate a significant portion of their own ethnic constituency. While such a position would have likely gained strong support among the Galicians of Western Ukraine, it would have provoked fear and opposition among Eastern Ukrainians, who have historically supported an adulterated conception of Ukrainian ethnicity consistent with linguistic and cultural Russification and a pan-Slavic identity.[20] In order to prevent exacerbating the cultural bifurcation of its own ethnic constituency and to lay a foundation for political support outside Central and Western Ukraine, *Rukh* was constrained to adopt a program of social nationalism. By doing so, they signaled that they would include and not seek to discriminate against those who had strayed or did not belong to the ethnic Ukrainian flock.

This social nationalist approach has paid significant dividends in the aftermath of the declaration of Ukrainian independence. Nowhere have its advantages been more apparent than in Kiev's efforts to defuse

[19] As Adrian Karatnycky has pointed out, the 1 December referendum won impressively in areas of predominant Russian settlement, receiving "85 percent in Russophone Odessa, 76.8 percent in industrial Donbas and 54 percent in Crimea." Adrian Karatnycky, "The Ukrainian Factor," *Foreign Policy* (Summer 1992): 91.

[20] For an analysis of the political salience of this cultural divide, see the chapter by Bohdan Krawchenko in Bohdan Krawchenko, ed., *Ukraine after Shelest* (Edmonton, Canada: Canadian Institute for Ukrainian Studies, 1975); Alexander J. Motyl, *Will the Non-Russians Rebel?* (Ithaca, NY: Cornell University Press, 1987); and Charles F. Furtado, Jr. and Michael Hechter, "The Emergence of Nationalist Politics in the USSR: A Comparison of Estonia and the Ukraine" in Alexander J. Motyl, ed., *Thinking Theoretically about Soviet Nationalities* (New York: Columbia University Press, 1991), 169-204.

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the most explosive challenge to the stability of the Ukrainian state—the political secession of ethnic minorities. Although several secessionist movements have arisen since independence, the most significant of these undoubtedly emerged in Crimea. The peninsula presented a special challenge to Ukrainian elites, not only because a majority of its residents were of Russian descent, but because of the region's unique territorial history: specifically, its relatively recent transfer from the Russian Soviet Federated Socialist Republic (RSFSR) in 1954; its strategic importance to Russia as the home of the Black Sea Fleet; and the claims of the deported former residents of the region—the Tartars—for their right to return to their historic homeland. If these conditions did not provide Crimean elites with sufficient cause for secessionist mobilization, the Russian parliament sought to further encourage such efforts by repeatedly challenging the territorial status of the peninsula through the adoption of resolutions that claimed Crimea as Russian territory. While the region had reasserted its status as an autonomous Soviet Socialist Republic within Ukraine even before the republic's August 1991 Declaration of Independence, the most dramatic confrontation came after the Crimean legislature, disappointed with Ukrainian backsliding on the details of a power-sharing agreement, adopted its own Declaration of Independence on 5 May 1992.

Much of the credit for the successful resolution of this crisis and for the subsequent maintenance of social peace in the region must be given to Kiev's persistent application of its social nationalist approach. In their dealings with local residents, Ukrainian officials have sought to assuage fears of forced Ukrainianization by providing support and encouragement for the cultural aspirations of both Russians and Tartars. Further, Ukrainian elites have been willing to back up these assurances by granting the region a considerable measure of political autonomy. For example, Crimean officials were offered territorial citizenship; property rights to all land and natural resources of Crimea; and the right to independent social, economic, and cultural ties with other countries. Yet Kiev would only agree to grant such powers if the territorial integrity of Ukraine was in turn recognized by the Crimean Supreme Soviet—an acknowledgment that entailed that the peninsula would remain a constituent part of Ukraine; that its citizens would also be citizens of the larger state; and that its sovereignty would not cause Crimea to become an independent subject of international law with the right to its own defense and foreign policy. The willingness of Ukrainian elites to accommodate such minority demands has enabled

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them to achieve two important objectives: to ease the costs of political and social integration among territorial compact ethnic groups; and by doing so to assert and preserve the principle of Ukraine's territorial integrity. While the impact of this policy has been most apparent in Crimea, it has also helped to secure ethnic peace elsewhere—most notably in Transcarpathia and eastern Ukraine.[21]

Its impressive domestic accomplishments notwithstanding, Ukraine's social nationalist approach has had equally positive implications for foreign policy and regional stability. For example, its liberal treatment of minorities has allowed Kiev to establish friendly and cooperative relations with its western neighbors—Romania, Moldova, Hungary, Slovakia, and Poland.[22] Unclouded by concerns that have heightened tensions elsewhere in the region—for example, between Hungary and Romania over Magyar minorities in Transylvania—these relations have quickly expanded to encompass more intensive diplomatic and trade relations and as such hold out the potential for even greater regional cooperation.[23]

As important, the social nationalist approach of Ukrainian elites has also been useful in defending against external assaults on the territorial integrity of the state. Denying its adversaries a strong pretext for intervention, it weakens the legitimacy and thus efficacy of their attempts to interfere in the internal affairs of Ukraine. For example, Russian nationalists have been hard pressed to cite systematic mistreatment of their ethnic brethren as a convincing pretext for challenging the legitimacy of Ukrainian rule in regions of compact Russian settlement. Consequently, these forces have been obliged to make territorial claims on less promising grounds: citing, for example, the historical presence of Russians in lands that now lie within Ukraine (from the Donbass in the East to Nova Rossiya and Crimea in the South) and the illegality of territorial transfers that were undertaken during the Soviet period. Bereft of moral or humanitarian justification, the revisionist agenda

[21] For details on the confrontation and conciliation over Crimea, see Roman Solchanyk, "The Crimean Imbroglio: Kiev and Simferopol" *RFE/RL Research Report* 1 (21 August 1992): 13–16.

[22] Edith Oltay, in an article examining the impact of Hungarian minorities on the conduct of Hungarian foreign policy, argues that Ukraine's willingness to accept the legitimacy of the concept of collective rights for Magyar minorities and to consider territorial autonomy for minorities has served as the foundation of its "markedly improved" relations with Hungary. For further details, see her "Minorities as Stumbling Block in Relations with Neighbors," in *RFE/RL Research Report* 1 (8 May 1992): 26–32.

[23] For more details on this effort, see Bohdan Nahaylo, "Ukraine and the Visegrad Triangle," *RFE/RL Research Report* 1 (15 June 1992): 28–29.

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of Russian neoimperialists has thus been dealt a crippling blow by Ukraine's support for ethnic pluralism. The outcome has contributed to regional stability.

Finally, this form of Ukrainian nationalism has been a positive force for regional security because of its essentially status-quo nature. While Ukrainian elites have been concerned with improving the treatment accorded to their six million countrymen abroad, they have demonstrated no proclivity to incorporate those residing in territorially contiguous areas or to seek an undue measure of influence over the internal policy of states that contain significant Ukrainian minorities. Kiev's behavior in Trans-Dniestria is illustrative of this inclination toward the status quo. The Ukrainian state has neither taken steps to funnel arms to Ukrainians in Moldova, nor has it sought to equip and export Ukrainian militants to the region, even though there has been internal political pressure, however slight, for it to do so.[24]

If the social nationalist strategy has a weakness, it is that in attempting to accommodate the aspirations and demands of all ethnic groups on its territory, there is a possibility that deals struck with one community will negatively impact the autonomy agreements brokered with other groups. The potential resulting conflict and their harmful consequences for Ukrainian elites' reputation for impartiality have been well illustrated by the controversial issue of Tartar rights in Crimea. It remains to be seen whether this strategy of ethnic accommodation, which has been so successful in defusing destabilizing ethnoviolence between Kiev and its ethnic minorities, can be similarly effective in heading off intercommunal conflicts between the non-Ukrainian citizens of Ukraine.

Another form of nationalism has had as strong an influence on Ukrainian foreign policy as social nationalism; yet its consequences have been decidedly more destabilizing—official nationalism. This species of nationalism revolves around the institutions of the state as the focus of national identity and loyalty. While present in all nation-states, it emerges with particular intensity in new states seeking to forge or reinforce a national identity through the often conflictual processes of state- and nation-building. While this aspect of the relationship between Ukrainian nationalism and foreign policy has prob-

[24] For more information on Ukrainian foreign policy toward Trans-Dniestria, see Bohdan Nahaylo, "Moldova Conflict Creates New Dilemmas for Ukraine," *RFE/RL Research Report* 1 (15 May 1992): 1–8.

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ably received the greatest amount of attention, it is also probably the least understood.

Ukraine's efforts to create its own armed forces on the basis of the troops and equipment based in the republic; its concern for control of tactical and strategic nuclear weapons on its territory; its requirement that officers serving in the republic swear an oath of loyalty to the Ukrainian state; its decision to create a Ukrainian currency, the hryvnia, as the centerpiece of an independent economic policy; its original determination to pay off its share of the Soviet debt alone, rather than jointly in cooperation with other republics; and its obstructive tactics in the elaboration of multilateral cooperation under the Commonwealth of Independent States – all these have been interpreted as manifestations of irrational nationalist prejudices whose consequences for Ukrainian interests are supremely self-defeating, if not outright dangerous. While Ukrainian actions may indeed be characterized as such, they must also be understood as arising out of widely shared assumptions about what constitutes sovereignty and how it is to be institutionally expressed. Thus, it is difficult to fault the Ukrainian leadership for attempting to build what other states take for granted, or for refusing to hand over a sovereignty that has only recently been obtained. Indeed, much of the criticism leveled at Ukraine appears to belie a discomfort with the exercise of sovereignty by those who traditionally have had little or no opportunity to do so, a double standard that does not apply to the actions of the legitimate successor state to the Soviet Union, Russia.

Yet if the strategic pursuit of official nationalism by Ukrainian leaders can not be faulted, their tactical methods surely can, especially in the military sphere. For example, in the fall of 1991, Ukrainian leaders took a series of sharp, preemptive acts to nationalize the armed forces stationed on their territory. While they subsequently recognized that there was "the need for a unified command of strategic forces and for the preservation of unified control over nuclear weapons," they quickly and successively undercut these assurances by supporting a tendentiously narrow definition of strategic forces; threatening to renege on their pledge to transfer tactical nuclear weapons to Russia; and insisting on "administrative control," if not operational command, of strategic weapons stationed in Ukraine.[25]

[25] The quote is from Article 3 of the "Agreement among the Member-States of the Commonwealth of Independent States on Strategic Forces" that was signed on 31 December 1991 in Minsk. It appeared in the *Current Digest of the Soviet Press* (hereafter CDSD) 44, no. 1 (1992): 8. The distinction

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Further, the Ukrainian government, after repeated assurances of its intention to become a nonnuclear state, attempted to back away from its initial promise "not to employ, not to produce, and not to acquire nuclear weapons."[26] As a consequence, Kiev reinterpreted its obligations under START-1 and the Lisbon Protocols, arguing that it was not required to relinquish all of its strategic nuclear warheads, or to ratify the Nonproliferation Treaty. Individually and collectively, these moves—often taken publicly as *faits accomplis*—have only served to heighten the anxiety of neighboring states as to the reliability of Ukraine as an international partner. Further, they have provided potential adversaries with the pretext for aggression—especially in Crimea—that Ukraine's internal policy has hitherto denied them. By fueling the domestic nationalism of adjacent states, Ukraine's official nationalism has threatened to trigger a destabilizing spiral of misperceptions that could very well end in conflict. By insisting on its sovereignty so vehemently, Ukraine has all but guaranteed that its independence will be challenged by outsiders.

Paradoxically, this provocative behavior has arisen partly as the destabilizing antithesis of a factor that has otherwise served to dampen the potential for international conflicts—the personal role of Leonid Kravchuk. The unsettling irony is that the very qualities that have contributed to the success of the Ukrainian president—his acceptability to non-Ukrainians as a proponent of social nationalism—are precisely those that have driven his aggressive tactics in foreign policy. Unable to prove his nationalist credentials in his actions toward non-Ukrainians at home, Kravchuk must do so in his conduct abroad. The consequences of this domestic political dynamic are disturbing, not simply because they threaten to provoke a response from a similarly vulnerable Russian elite, but because they potentially undermine the gains of social nationalism domestically. Defining whom one stands against in order to demonstrate what one stands for, risks putting a belligerent face on Ukrainian nationalism, which may alienate Ukraine's ethnic minorities even as it solidifies support among nationalistically-minded Ukrainians.[27]

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between administrative control and operational command can be found in Foye, "Ukrainian Armed Forces," 66.

[26] Original nonnuclear pledge appeared in 16 July 1990 Declaration of Sovereignty of the Ukrainian Supreme Soviet. For the full text of this document, see Furtado and Chandler, *Perestroika*, 237–241.

[27] Evidence that this may already be occurring is provided by Kathleen Mihailisko, who notes that support for Kravchuk is weaker among Russians (especially in the eastern as opposed to southern

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Having noted the destabilizing impact of official nationalism on Ukrainian foreign policy, it is important to stress that the international community may have already experienced its worst effects. Originally the by-product of insecurity, official nationalism's importance should wane as Ukraine feels more confident in its sovereignty and as the international community comes to accept its legitimacy in both the spirit as well as the letter of international law.

Further, the crash course that Ukrainian elites have received in the conduct of international relations over the past two years should serve to temper their initial hypervigilant defense of national sovereignty, enabling them not only to better distinguish the real from the rhetorical in the statements and actions of their neighbors, but to recognize and more completely appreciate the costs associated with the uncompromising assertion of state independence. Increasingly, economic considerations have been the most important force disciplining such expressions of nationalism. Ukraine's expulsion from the ruble zone, its substantial indebtedness to Russia for energy imports, and its faltering push for economic reform have forced Ukrainian leaders not only to scale back their original estimates of the size of the Ukrainian armed forces, but to consider security arrangements that would have been unthinkable in the aftermath of independence: namely, selling off its portion of the Black Sea Fleet to Russia and leasing Sevastopol as a base for Russian naval operations. The deteriorating performance of the Ukrainian economy was a major factor driving both the government's decision to seek compensation for its nuclear stockpile and its eventual agreement in January 1994 to dismantle this force. Thus, as Ukraine increasingly pays the price for its failure to implement thoroughgoing economic reforms, it appears to be coming to a more realistic recognition of the political and fiscal limits of its foreign and security policy.

Conclusion

This article has sought to determine the nature and extent of the influence of nationalism on Ukrainian foreign policy. As the foregoing analysis makes clear, there is room for optimism that this interaction

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oblasts) and hypothesizes that this "greater mistrust of Kravchuk among non-Ukrainians may reflect some apprehension about the president's emphasis on defending the interests of independent Ukraine." Kathleen Mihailisko, "Public Confidence in the Ukrainian Leadership," *RFE/RL Research Report* 1 (30 October 1992): 10.

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need not have destabilizing consequences for international security. Yet it would be an exercise in self-deception to believe that this must always be the case. There is no guarantee, for example, that Ukraine's neighbors will attempt to ease its crisis of confidence by accepting its legitimacy as a sovereign state. One of the factors that promises to contribute most to the exacerbation of official nationalism in Ukrainian foreign policy is the specter of revanchist social nationalism in Russia. For example, in the spring of 1992, an influential cadre of Russian politicians headed by Alexander Rutskoi and Sergei Stankievich began to put forward a foreign policy strategy that questioned the legitimacy of elites in the successor states, especially the so-called national careerists, who have been the least willing to accommodate Russian interests; hinted at the need for changes in the status of Russian borders; and demanded an active approach toward the protection of Russian minorities outside the homeland.[28] In conjunction with the actions of the 14th Army in Moldova and the Russian Supreme Soviet's decree on the territorial status of Crimea, these statements left the distinct impression that an influential faction of the Russian elite was seeking to resurrect a Greater Russia by reversing the territorial concessions that accompanied the collapse of the Soviet Union.[29]

These trepidations were only strengthened by Russia's toughening stand toward the near abroad throughout 1993. Continued immobility on resolving the status of the 14th Army in Moldova, rumored interference in Georgian internal affairs via support for Abkhazian secessionists, and a willingness to sever troop withdrawal negotiations with the Baltic states were all indications that a more aggressive approach was gaining prominence in Russian foreign policy. Although these actions were often interpreted as an attempt to mollify an increasingly fractious domestic opposition—and thus, were held as not being truly representative of the intentions of those directing Russian foreign policy—leaders of neighboring states were generally less willing to indulge this "show" of force. Republican elites, like those in Ukraine, understood very well that even if the most active proponents of imperial

[28] For a sample of these views, see "Rutskoi Says Russia May Need Own Army," *CDSP*, vol. 44, no. 3, 9–11; "Rutskoi Attacks Yeltsin Government," *CDSP*, vol. 44, no. 4, 1–5; and "Stankievich Charts Russian Foreign Policy," *CDSP*, vol 44, no. 13, 1–4.

[29] One of the first to point to the implications of the collapse of the Soviet Union for the structure and existence of the Russian state was Aleksandr Tsipko. See his "Tsipko Urges Yeltsin Pullback to Save Union," *CDSP*, vol. 43, no. 39, 1–4; and "RSFSR Can't be Successor to USSR," *CDSP*, vol. 43, no. 45, 9, 32.

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policies had so far failed to gain direct control over Russian foreign policy, they had still succeeded in forcing those in power to take account of their proposals. By failing to reject these proposals out of hand, mainstream politicians also left themselves the option of co-opting these ideas and their proponents if it was necessary to do so at a later date—a possibility that was not lost on the leaders of neighboring states. With the impressive showing of the Liberal Democrats and Communists in the December 1993 elections to the new Russian parliament—specifically the rise to prominence of Vladimir Zhirinovsky—leaders of the successor states have only been given further cause for concern.

The rise of revanchist social nationalism in Russia is likely to have particularly nasty implications for the impact of nationalism on foreign policy in Ukraine. By fundamentally questioning Ukraine's right to its own sovereign state or to its control over historically Russian lands, this expansive definition of the Russian nation would only further stiffen Ukrainian resolve to defend its sovereignty and territorial integrity. If left unmediated, this process would quite possibly descend into violence. Such external challenges to the Ukrainian state would fuel the rise of more insidious forms of nationalism, very likely leading to demands for the harassment, internment, expulsion, or slaughter of Russian populations who could easily be portrayed as agents of Russian imperialism. It would be naive to discount the strong possibility that such treatment would not also extend to other national minorities as the original fear of Russians transforms into suspicion of all non-Ukrainians. The persecution of Russian and other minorities would in turn provoke demands for humanitarian intervention, whose motivations, regardless of their source, would be mistrusted and lead to a further deepening of a siege mentality among Ukrainians. Given the destabilizing consequences of this downward spiral, it would appear that if the international community is concerned with limiting the impact of nationalism on Ukrainian foreign policy, it would do well to broaden its analytical focus beyond Ukraine to include the actions of those who have a strong influence over the structure of the regional environment to which Ukraine must react. In other words, the road to the containment of Ukrainian nationalism may well lie through Moscow.

Yet this is not to argue that it does not also pass through Kiev. The provocative impact of official nationalism on Ukrainian foreign policy is rooted in the realities of domestic politics. Even if we believe that

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such behavior will diminish over time, it does not follow that we should ignore its consequences or condone its excesses. For example, a significant number of Ukrainian legislators currently contend that the assertion and defense of national sovereignty would be furthered by the retention of a strategic nuclear deterrent. In this view, the maintenance of such a force would not only symbolize the arrival of Ukraine as a major European power but would guarantee its existence as an independent state. Although by no means predominant, these forces were able throughout 1993 to generate sufficient political pressure to delay, time and again, Ukraine's promised ratification of the START I and Nonproliferation Treaties. Given this past behavior, it would be foolish to expect that such forces will automatically embrace the Ukrainian government's January 1994 agreement with the United States and Russia to dismantle all nuclear weapons on its soil. Thus, Western governments, especially the Clinton administration, must make it clear to these elements that there is no support for so expansive a definition of the required accoutrements of Ukrainian national sovereignty. Further, it should be stressed that although the security interests of Ukraine must merit respectful consideration—indeed, the appreciation of these concerns should be recognized as a necessary condition for the success of any long-term strategy for regional stability—there is no reason that these requirements cannot be met while remaining faithful to Ukraine's nonnuclear pledge and its commitment to ratify and comply with the obligations of the aforementioned treaties. Finally, these elements should be informed that if they are willing to frustrate these agreements by asserting national sovereignty at the cost of regional and international security, then they must be prepared to pay the price for their convictions.

Western governments, however, must do more than wield the stick if they are to gain a strong measure of influence in the region. Curbing the more destabilizing manifestations of official nationalism will also require the West to accept Ukraine as a key regional actor, lending a sympathetic ear to its security concerns and distributing economic and security aid to ease its transition to more preferable force structures. The focus on carrots as well as sticks recognizes the fact that Ukrainian elites need our assistance as much as our approval. If they are to fashion compromises that serve western interests, they and other regional leaders must be provided with tangible rewards for their compliance. Otherwise, they will have little interest in braving the ridicule and overriding the proposals of their more nationalistic opponents.

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Finally, it must also be recognized that the current primacy of social nationalism in Ukraine is not something that can be taken for granted. Domestic conditions, especially a weakening economy, could precipitate regional conflicts – East versus West – that could with some demagogic prodding turn ethnic.

Further, it must be acknowledged that the adoption of shock therapy in Ukraine will only exacerbate these tensions in the short term. As in the former Czechoslovakia, radical economic reforms will have a differential impact on the regions of the country as well as the ethnic minorities compactly settled on their territory. Specifically, such changes promise to have particularly important consequences for eastern and southern Ukraine, which are home both to enterprises in the declining coal and heavy industries as well as to significant Russian minorities. Subjecting these regional industries to the discipline of the market will inevitably lead to numerous business closures, increased unemployment, and attendant social dislocation. While it appears that Kiev long sought to delay the introduction of market reforms precisely because it feared their ethnic consequences, it is now clear that ignoring substantial economic reform is no longer an option. The continued hesitation of Ukrainian elites in this sphere has only led to disastrous economic consequences, while bringing them little in the way of ethnic peace in eastern Ukraine. The region's declining economy has already led to strikes and demonstrations that have called for everything from greater local autonomy to outright separation. Whether these moves are sincere or represent a cynical ploy by regional elites to buttress their own political power and leverage, they illustrate the importance that economic policy will have in maintaining political stability and preventing future ethnic turmoil in Ukraine. Thus, in our concern to contain the influence of nationalism on Ukrainian foreign policy, we should not neglect to encourage the domestic conditions that so fundamentally, if indirectly, affect the international security of the region.*

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The Failure of Constitutional Welfare Rights in the Warren Court

ELIZABETH BUSSIERE

The study of judicial politics has long been characterized by disputes between normative jurisprudence and an empirically oriented political jurisprudence. Normative jurisprudence examines the principles and values embodied in the courts' constitutional and statutory decisions and consists of traditional public law and critical legal studies, which are both skeptical of the positivist bent of behavioral political science.[1] Yet, public law and critical legal studies exhibit important differences in their understanding of the legal doctrines that courts formulate to justify their decisions. While public law treats legal doctrines as a form of normative political philosophy, critical legal studies conceptualize them as political ideology that rationalizes unequal power relations.

[1] For representative works in normative jurisprudence, see Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986); John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980); and Frank I. Michelman, "Welfare Rights in a Constitutional Democracy," *Washington University Law Quarterly* 3 (Summer 1979): 659–693. For critical legal studies, see, for example, Robert W. Gordon, "Critical Legal Histories," *Stanford Law Review* 36 (January 1984): 57–125; Mark Kelman, *A Guide to Critical Legal Studies* (Cambridge, MA: Harvard University Press, 1987); and Roberto Mangabeira Unger, "The Critical Legal Studies Movement," *Harvard Law Review* 96 (January 1983): 563.

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Political jurisprudence, by contrast, pays much less attention than normative jurisprudence to the internal logic of legal doctrines. Conceiving of judges as political actors in their own right and of courts as embedded in relations with other institutions, a large body of literature explains judicial decisions in terms of ascendant party coalitions, judges' political orientations and role conceptions, or small-group dynamics.[2] In the wake of the behavioral revolution, the broad empirical agenda of political jurisprudence has come to dominate the study in political science of law and the courts.

The continuing rift between normative and political jurisprudence has alarmed those who seek a common purpose in the study of judicial politics. Some scholars criticize behavioralists for disregarding normative issues. Other scholars worry that an "increasing proportion of . . . political jurisprudence will be more normative than positive . . . [and] that the new jurisprudence of values will serve as a cover for . . . engaging in seat-of-the-pants social judgment."[3] Still others respect the pluralism in the judicial-politics subfield but seek to create a common conceptual language to facilitate exchange and comparison of results between normative jurisprudence and political jurisprudence.[4] To bridge this gulf, Rogers Smith has proposed a research strategy that "integrate[s] the study of ideas in law with *descriptive* studies of the historical evolution of political institutions and be-

[2] Martin Shapiro coined the term "political jurisprudence" in his *Law and Politics in the Supreme Court* (New York: The Free Press, 1964). Regarding the relation between Supreme Court behavior and party coalitions, see, for example, Richard Funston, "The Supreme Court in Critical Elections," *American Political Science Review* 69 (September 1979): 795–811; and Martin M. Shapiro, "The Supreme Court: From Warren to Burger" in Anthony King, ed., *The New American Political System* (Washington, DC: American Enterprise Institute, 1978). On the role of judges' political orientations and role-conceptions, see Sheldon Goldman, "Voting Behavior on the U.S. Court of Appeals Revisited," *American Political Science Review* 69 (June 1975): 491–506; J. Woodford Howard, Jr., "Role Perceptions and Behavior in Three U.S. Courts of Appeals," *Journal of Politics* 39 (November 1977): 916–938; Herbert M. Kritzer, "Political Correlates of the Behavior of Federal District Judges: A 'Best Case' Analysis," *Journal of Politics* 40 (February 1978): 25–58; Stuart S. Nagel, "Political Party Affiliations and Judges' Decisions," *American Political Science Review* 55 (December 1961): 843–850; and Glendon Schubert, ed., *Judicial Decision-Making* (New York: Free Press, 1963). The effect of intra-Court dynamics is examined in, among others, Saul Brenner and Harold J. Spaeth, "Majority Opinion Assignments and the Maintenance of the Original Coalition of the Warren Court," *American Journal of Political Science* 32 (February 1988): 72–81; and Walter F. Murphy, *Elements of Judicial Strategy* (Chicago: University of Chicago Press, 1964).

[3] Martin M. Shapiro, "Recent Developments in Political Jurisprudence" *Western Political Science Quarterly* 36 (December 1983): 543.

[4] Rogers M. Smith, "Political Jurisprudence, the 'New Institutionalism,' and the Future of Public Law," *American Political Science Review* 82 (March 1988): 89–108.

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havior."[5] Specifically, Smith explains how to use the insights gleaned from the new institutionalism literature to establish a common research agenda for judicial-politics scholars of different methodological orientations.[6]

Proponents of political jurisprudence neglect the ways in which institutions themselves "shape the interests, resources and ultimately the conduct of political actors, such as judges. . . ."[7] They understand institutional behavior as the byproduct of exogenous forces, such as power-seeking political parties, interest groups, or social classes. The new institutionalism, on other hand, places the internal processes of institutions at the center of political life. Similarly, Smith contends that the behavioralists' conception of politics as the conflict among self-interested individuals and groups is a pale and unidimensional account of human experience. The behavioralist paradigm ignores the capacity for human agency in, and the relative autonomy of, institutional conduct. Describing political institutions as "more than simply mirrors of social forces," Smith attributes to them "a kind of life of their own, . . . influenc[ing] the self-conception of those who occupy roles . . . in ways that can give those persons distinctively 'institutional perspectives.'"[8]

For the new institutionalism to become incorporated into judicial-politics research, Smith argues, the study of institutions must include government agencies and patterns of political or legal discourse that affect public policy agendas. He recommends defining independent variables as "relatively enduring structures," that is, the "key mental or rhetorical structures" that judges use to justify their decisions, and dependent variables as "the set of 'meaningful acts,' such as judicial decisions. . . ."[9]

To forge linkages between the normative and behavioralist concerns of judicial-politics research, this article examines the impact of constitutional doctrines, political ideology, and intra-Court bargaining on Supreme Court decision making. Specifically, the article analyzes the Warren Court's understanding of the Fourteenth Amendment's Equal

[5] Ibid., 90. (Emphasis in original.)

[6] For an introduction to the new institutionalism, see James G. March and Joan P. Olsen, "The New Institutionalism: Organizational Factors in Political Life," *American Political Science Review* 78 (September 1984): 734–749; and Peter R. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (New York: Cambridge University Press, 1985).

[7] Ibid., 91.

[8] Ibid., 95.

[9] Ibid., 102.

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Protection Clause and the influence of the fundamental rights and suspect classifications doctrines on four lankmark decisions in criminal procedure, political representation, and welfare policy.[10] The focal point is the intra-Court bargaining over the constitutional relevance of human needs and economic status. I focus on a small number of cases in order to analyze the justices' reasoning in more detail and to illuminate a particular structure of thought. These cases are representative of the Warren Court's new Equal Protection decisions, in which the Court usually invalidated laws containing "suspect classifications" or impinging on "fundamental rights," while upholding laws involving economic or social policy. The decisions also exhibit the Warren Court's concern about the adverse effects of indigence on individual rights.[11]

This article reevaluates the prevailing argument in the literature that explains the Warren Court's Equal Protection decisions as a judicial consolidation of the New Deal coalition's electoral success.[12] The collected papers of Earl Warren and William Brennan, first made public at

[10] The universe of cases includes the following Equal Protection and Due Process decisions rendered by the Warren Court: for access to the criminal justice system, *Douglas v. California*, 372 U.S. 353 (1963) and *Gideon v. Wainwright*, 371 U.S. 335 (1963); for access to the political system, *Kramer v. Union Free School District*, 395 U.S. 621 (1969) and *Cipriano v. Houma*, 395 U.S. 701 (1969); for procedural protections for welfare recipients, *Goldberg v. Kelly*, 397 U.S. 254 (1970). I omitted the Warren Court's decisions on public education, specifically the school desegregation decisions, because they dealt with race as a "suspect classification," whereas my concern is with the relevance of poverty. Race and class did not intersect explicitly until the school desegregation and school finance cases that the Burger Court confronted. Nonetheless, I believe that the doctrinal foundation of the school desegregation decisions, particularly the distinction enunciated by the Warren Court between *de jure* (or intentional government) discrimination and *de facto* (or circumstantial) discrimination, reinforces my argument that the court steered clear of rulings with overtly downwardly redistributive policy consequences. The antiredistributive implications of the *de jure/de facto* distinction became clear in *Miliken v. Bradley*, 418 U.S. 717 (1974), in which the Burger Court rejected metropolitan-wide busing plans designed to achieve racial integration of predominately black inner-city schools with predominantly white suburban schools absent *de jure* discrimination. See also *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), in which the Burger Court rejected the argument that apportioning government education funds on the basis of a school district's property-tax base discriminates against the poor and violates the fundamental right to an equal education. Interestingly, in the 1989–1990 term, the Supreme Court ruled that federal courts can order, although not fashion and impose, tax increases to desegregate public schools. In his five-member majority opinion, Justice White stressed that *de jure* racial segregation must not be allowed to persist under the guise of budgetary pressures.

[11] David M. O'Brien, "Reconsidering Whence and Whither Political Jurisprudence," *Western Political Science Quarterly* 36 (December 1983): 558–563; and Austin Sarat and Susan Silbey, "The Pull of the Policy Audience," *Law and Policy* 10 (April/July 1988): 97–166.

[12] Richard Funston, "The Supreme Court and Critical Elections," *American Political Science Review* 69 (September 1975): 803; Shapiro, "The Supreme Court: From Warren to Burger," 193.

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the Library of Congress in 1985-1986, suggest that the Warren Court's Equal Protection doctrines were rooted in a classical liberal ideology that transcends Democratic and Republican party differences. Certain salient components of that ideology, such as the disjunction between civil or political equality and economic inequality, account for the Warren Court's unwillingness either to constitutionalize a right to welfare or to treat the poor as a suspect classification based on economic class. In short, the justices articulated new Equal Protection doctrines that, although widening the poor's access to government, paradoxically impeded the Court's ability to satisfy the demands of the welfare rights movement for greater economic equality or security.

The New Equal Protection: Access to Criminal Justice

The Warren Court first exhibited its vigilance over the unequal private circumstances of the poor and nonpoor in *Griffin v. Illinois*.[13] The Supreme Court declared unconstitutional an Illinois statute that had made appellate review contingent on payment for a trial transcript. The Court ruled that indigence, like race or religion, is "constitutionally irrelevant," since a defendant's ability to pay a fee has no rational relation to his guilt or innocence. The plurality opinion stressed that "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has."[14]

Griffin marked a new direction in Equal Protection review, because for the first time in a nonrace case the Supreme Court invalidated a law that accorded formal equality (numerically equal treatment) to all persons. Prior to *Griffin*, the Supreme Court had upheld statutes which resulted in inequalities as long as there was neither discriminatory intent nor an arbitrary classification scheme. Decrying the insufficiency of formal equality in the context of criminal procedure, Justice Felix Frankfurter's concurring opinion noted sardonically that the transcript fee "would justify a latter-day Anatole France to add one more item to his ironic comments on the 'majestic equality' of the law. 'The law, in its "majestic equality," forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.'"[15]

Justice John Marshall Harlan, in dissent, perceived no violation of Griffin's Fourteenth Amendment rights merely because the transcript

[13] *Griffin v. Illinois*, 351 U.S. 12 (1956).
[14] Ibid., 18–19.
[15] Ibid., 23.

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fee affected the rich and poor differently. He criticized the plurality opinion for requiring the states to offset the unequal circumstances of poor defendants. Distinguishing between moral and Constitutional obligations, Justice Harlan wrote in another criminal procedure opinion: "The state may have a moral obligation to eliminate the evils of poverty, but it is not required by the Equal Protection Clause to give to some whatever others can afford."[16] Notwithstanding their downwardly redistributive policy implications, subsequent criminal proceedings cases reaffirmed the plurality opinion in *Griffin*.[17]

The egalitarian significance of *Griffin*, then, was the Court's implicit recognition that wealth, like race, is a suspect classification because of widespread discrimination toward the poor. In other words, laws drawn along the basis of wealth and pertaining to an important interest, such as appellate review, constitute an invidious discrimination between rich and poor. Not content with what Justice Harlan defended as a uniform policy, a majority of the Warren Court considered constitutionally suspect the differential impact of statutes on rich and poor and thus laid the groundwork for judicial oversight of the effect of indigence on fundamental rights or fundamental interests.

The New Equal Protection: Political Representation

Throughout the 1960s, the Warren Court subjected to strict scrutiny a number of laws involving democratic rights. For example, in *Reynolds v. Sims*, the Court identified voting as a "fundamental political right" and defined political representation as "equal state legislative representation for all citizens."[18] *Harper v. Virginia Board of Elections Commissioners* stands out because it was the first case that explicitly elevated indigence to a protected category, alongside race and religion, under the Equal Protection Clause.[19] Scholars frequently treat *Harper* as the third in the "wealth discrimination" trilogy, because the Court declared the poll tax to be an impediment to the poor's exercise of democratic rights.[20]

In *Harper*, the Warren Court struck down a Virginia poll tax because a voting fee creates an "invidious discrimination" between rich and

[16] *Douglas v. California*, 372 U.S. 353 (1963).

[17] *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963).

[18] *Reynolds v. Sims*, 377 U.S. 533 (1964), 568.

[19] *Harper v. Virginia Board of Elections Commissioners*, 383 U.S. 663 (1966).

[20] The trilogy consists of *Griffin v. Illinois*, *Douglas v. California*, and *Harper v. Virginia Board of Election Commissioners*.

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poor. In the majority opinion, Justice William O. Douglas reasoned that "[t]he principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay."[21] Economic status is a "suspect classification" because it is unrelated to one's ability to vote intelligently.

In addition to "suspect classification," the majority reiterated the "fundamental right" to vote established in *Reynolds v. Sims*. Although voting in a state election is not an enumerated constitutional right, the Court deemed it "fundamental" in safeguarding other basic civil and political rights.[22] Repudiating the historical claim to legitimacy of the poll tax as a mechanism encouraging only civic minded persons to vote,[23] Justice Douglas suggested that conceptions of equal protection evolve with changing social and political values. Far from promoting a "compelling government interest," the Court concluded, the poll tax is an archaic practice that offends the egalitarian values of a modern democratic polity.

Justice Hugo L. Black, in dissent, perceived no tenable basis for judging the poll tax as irrational or as discriminatory towards the poor. Justices Potter Stewart and Harlan agreed that it was "not unreasonable" to assume that "people with some property have a deeper stake in community affairs . . . and that the community and Nation would be better managed if the franchise were restricted to such citizens. . . ."[24] The dissenting justices chastised their colleagues for subjecting American society to what they considered to be an unbridled egalitarian ideology. At the core of the disagreement were the criteria a state may use in distributing the franchise. As these distributive criteria are embedded in a particular theory of democracy, *Harper* necessarily engaged the justices in a substantive debate over the kind of inequality that warrants judicial scrutiny. The case addressed the meaning of democratic citizenship and repudiated Virginia's hierarchical definition, conditioning the right to vote on economic status.

Harper intimated an increasingly interventionist role for the Supreme Court. Justice Black was among those who perceived a majority

[21] *Harper*, 383 U.S. 663, 668.

[22] Ibid., 667.

[23] As Justice Douglas acknowledged in a footnote, the Virginia poll tax was instituted to deter blacks from voting; nonetheless, he added that "we do not stop to determine whether on this record the Virginia tax in its modern setting serves the same end." See ibid., 666.

[24] Justice Harlan, dissenting, ibid., 684–685.

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of the Warren Court as repeating the abuses perpetrated by the infamous *Lochner*-era Court in the early twentieth century. The *Lochner*-era Court had insulated businesses from many health and safety government regulations by interpreting the Fourteenth Amendment as embracing a "liberty of contract." The Warren Court was accused of substantive equal protection for allegedly interjecting the justices' personal egalitarian philosophy into the Constitution. Yet it was unclear how far the Warren Court would go to equalize the distribution of so-called fundamental goods and services in American society. On the one hand, *Harper* further pried open the Equal Protection Clause, enabling the justices to shield the poor from the so-called capricious acts of majority will. On the other hand, the Warren Court had as yet to employ the standard of strict scrutiny/compelling government interest outside the relatively comfortable domains of criminal and political procedure.

Griffin and *Harper* generated political support beyond the national governing coalition because of a widely shared consensus on the impropriety of inegalitarian values in the criminal justice and democratic processes. The wealth-discrimination rulings were seen to flow from a procedural rather than a substantive conception of distributive justice—that is, as mandating equal access to the criminal justice and the democratic process. The popular acceptance of *Griffin* and *Harper* could not, however, obscure the murkiness of the distinction between procedure and substance. Instead of issuing a categorical mandate to the states to supply a trial transcript or the vote in a state election, the Court held that, should a state decide to provide these goods, it must do so in an even-handed way. The requirement in the wealth-discrimination cases was one of even-handed distribution of what the state decides to create or furnish. The philosophically pregnant question of which goods are so fundamental as to be distributed irrespective of wealth beleaguered the Warren Court.

Doctrinally, then, the Warren Court was concerned with a value-laden question of which goods must be distributed equally. Yet, in order to portray themselves as restricting their attention to procedural issues, the justices assigned to the state legislatures the task of deciding which goods are fundamental for Equal Protection purposes.[25] Never-

[25] The desire to avoid substantive judgments and to confine the Court's attention to procedural issues is illustrated particularly well by Justice Black's treatment of *Griffin v. Illinois*. In a memo to the Court, Justice Black expressed the fear that if the decision were based on the Due Process Clause, "I think the Court . . . would have to be prepared to say that the right to a transcript is a constitutional ingredient of a state's grant of the right to appellate review. If it is an equal protection

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theless, the justices were being called upon to make a substantive judgment about distribution. Predictably, this caused problems for the court, because the post-1937 consensus in constitutional law is that distributive issues are properly resolved by elected officials who are directly accountable to the public.

In the late 1960s, the Warren Court confronted the politically volatile area of welfare policy. Some welfare rights advocates expected the Warren Court to elevate welfare to the fundamental rights category on the *Harper* theory that welfare, like voting, is essential to the effective exercise of constitutional rights. In *Shapiro v. Thompson* the Court grappled with some of the thorniest disputes in welfare policy.[26] In the next section, I will use archival materials to analyze *Shapiro*, which presented both legal opportunities and obstacles to the welfare rights movement.[27] The analysis concludes with *Dandridge v. Williams*, in which the Court flatly declined to constitutionalize a welfare right.

The New Equal Protection: Social Welfare Policy

Shapiro v. Thompson

The Supreme Court addressed three consolidated cases in *Shapiro v. Thompson* in which legal services lawyers questioned the constitutionality of the waiting period requirement that Connecticut, Pennsylvania, the District of Columbia, and thirty-seven other states used in the administration of welfare policy. The plaintiff in this case, Valerie Thompson, was a nineteen-year-old single mother who moved from Massachusetts to Connecticut in 1966 in order to live closer to her mother. Connecticut welfare officials denied Thompson benefits because she had not lived in the state for at least a year. Under Connecticut law, a person who moved into the state who lacked the resources to support herself and her dependent children would be entitled only to temporary assistance until their return to the state of origin had

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argument, the Court need only go so far as to hold that where a state makes a transcript available to those who can pay for it, the transcript must also be given to those who cannot buy it." See, Bench Memo, 4, Conference Memoranda, Container Number 166, the Papers of Earl Warren, Library of Congress, Manuscript Division, Washington, DC.

[26] *Shapiro v. Thompson*, 394 U.S. 618 (1969).

[27] The draft opinions for *Shapiro* are reprinted in Bernard Schwartz, *The Unpublished Opinions of the Warren Court* (New York: Oxford University Press, 1985). Unfortunately, Schwartz merely presents the opinion without any explanation of why the Warren Court reversed its original ruling in 1968.

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been arranged. Any claimant who refused to move back to the state of origin was denied welfare assistance until she satisfied the one-year durational residence requirement. Hartford legal services attorneys brought suit against Bernard Shapiro, the welfare commissioner of Connecticut. The Supreme Court accepted the *Shapiro* case along with the challenges to the Pennsylvania and District of Columbia one-year residence laws.

In its original 1968 opinion on *Shapiro v. Thompson*, Chief Justice Warren's six-member majority upheld the one-year residence requirements many states used to administer Aid to Families with Dependent Children (AFDC). Because the justices failed to resolve the case to their satisfaction, the Court reheard the case in 1968 and in a six-to-three vote, with the chief justice in dissent, found the durational residence requirements in violation of the Equal Protection Clause. Justice Brennan, noted for fostering consensus on the Court, successfully built a coalition invalidating the classification as an "invidious discrimination" against the newly arrived needy residents. The Court branded constitutionally intolerable state governments' attempts to protect their budgets by inhibiting the migration of poor people into their jurisdictions. The durational residence requirements contravened the Equal Protection Clause because they "penalized" the "fundamental right" to interstate travel.

Acknowledging the states' financial constraints, the Court nevertheless prohibited government officials from saving money by "fenc[ing] out" indigent families. Noting the importance of welfare benefits "upon which may depend the ability of families to obtain the very means to subsist—food, shelter, and other necessities of life," Justice Brennan explained:[28]

> . . . a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. . . . [A] mother seeking to make a better life for herself and her children should [not] be regarded as less deserving because she considers, among other factors, the level of a State's public assistance. Surely such a mother is no less deserving than a mother who moves into a particular State in order to take advantage of its better educational facilities.[29]

The state governments further defended the one-year residence laws as enabling officials to differentiate old from new residents on the

[28] Ibid., 627.
[29] Ibid., 631–632.

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basis of tax contributions to the community. The Court questioned the empirical basis of that policy and pointed out the disturbing normative implications—that is, permitting states to exclude new residents from schools, parks, libraries, and other public facilities and services. The Equal Protection Clause, Justice Brennan retorted, proscribes the distribution of important state services according to citizens' past fiscal contributions. In short, the states failed to prove a "compelling government interest" behind the one-year residence laws.

The majority opinion was roundly criticized for inadequately explaining why interstate travel, lacking explicit textual support in the Constitution, was implicated in *Shapiro*. Justice Harlan lambasted the Court's "*ad hoc* approach" to Equal Protection review: "When the right affected is one assured by the Federal Constitution, any infringement can be dealt with under the Due Process Clause."[30] Although agreeing that interstate travel is a "fundamental right," Justice Harlan concluded that durational residence requirements had only an "indirect" effect on this right and should, therefore, stand.

Some legal scholars believed the majority opinion was a thinly veiled attempt to incorporate subsistence into the penumbra of constitutionally protected rights.[31] For example, Philip Kurland argued that in *Shapiro* the Court had come ever "so close to creating a Constitutional right to welfare assistance."[32] When Justice Brennan equated welfare benefits with "the very means to subsist," he encouraged the view that *Shapiro* was "really" based on the right to welfare, not interstate travel.

The majority opinion in *Shapiro* was fraught with normative and political implications. Incorporating a right to welfare into the Equal Protection Clause would have gone beyond the procedural notion of equality in the wealth-discrimination trilogy and encapsulated a substantive conception of equality rooted in a theory of human needs. Furthermore, applying the wealth-discrimination doctrine to social welfare policy would have had more extensive redistributive consequences than a right-to-welfare doctrine. After all, the wealth-discrimination doctrine points to relative equality in the distribution of state goods and services. Scrutiny of archival materials will provide an an-

[30] Ibid., 661–662.

[31] See, for example, Philip B. Kurland, "The Judicial Road to Social Welfare," *Social Service Review* 48 (December 1974): 490; and Martin Shapiro, "The Supreme Court's 'Return' to Economic Regulation" in Karen Orren and Stephen Skowrenek, eds., *Studies in American Political Development*, vol. 1 (New Haven: Yale University Press, 1986), 191.

[32] Kurland, "Judicial Road to Social Welfare."

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swer to whether *Shapiro* rested, however implicitly, on a constitutional right to welfare or on a wealth discrimination.

Shapiro: A Fundamental Right to Welfare? To determine whether the right-to-travel argument was a mere cover for a right to welfare, one must examine the *Shapiro* majority's response to the briefs submitted by the Legal Services Program (LSP) attorneys and by Archibald Cox, who presented the oral argument on behalf of the welfare recipients. Archival sources reveal that Justices Brennan, Stewart, and Byron White were particularly impressed by Archibald Cox's argument for the appellees. Thus it is important to examine the Court's response to Cox's supplemental brief and oral presentation. According to Cox, "[s]uch gross discrimination—in relation to fundamental human interests—between persons whose situation is identical in all relevant respects is *alone enough to violate the Equal Protection Clause*. . . . The elementary character of the needs served by these assistance programs distinguishes them from other State grants."[33] Justice Brennan echoed Cox's characterization of welfare when he noted that the durational residence requirement erected a barrier to obtaining "the very means to subsist."[34]

Yet, clearly, the *Shapiro* majority perceived a substantive constitutional right to welfare as problematical. Cox was himself loath to rest his case against residence requirements solely on grounds that they denied "the bare essentials of life." Although he considered discrimination in relation to subsistence needs to be unconstitutional, Cox called for a "much narrower decision."[35] The explosive legacy of *Lochner* led even the Center on Social Welfare Policy and Law (CSWPL), a back-up center of the LSP, to define welfare assistance in an amicus curiae brief as a statutory entitlement, rather than a "fundamental right."[36] Following *Griffin* and *Harper*, the CSWPL framed the constitutional question in terms of the even-handed administration of a state-created good, AFDC, and of the fundamental right to interstate travel.

Justice Brennan, while rejecting the states' definition of welfare as a gratuitous privilege, declined to pronounce whether welfare benefits

[33] Archibald Cox, Supplemental Brief on Reargument, reprinted in Philip B. Kurland and Gerhard Casper, eds., *Landmark Briefs and Arguments Before the Supreme Court of the United States: Constitutional Law*, vol. 68, (Arlington, VA: University Publications of America, 1975), 88. (Emphasis added.)

[34] *Shapiro*, 394 U.S. 618, 627.

[35] Cox, Supplemental Brief, 88.

[36] Brief for Appellee, reprinted in Kurland and Casper, *Landmark Briefs*, 61.

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are a constitutional or a statutory right. His evasion was curious, because the constitutional status of welfare assistance determined not only the viability of the right-to-welfare doctrine but also the scope of the fundamental right to travel. The majority opinion even raised the possibility that some durational residence requirements would be sustained in Court because they do not unduly burden a fundamental right. Justice Brennan's ambiguity at such a crucial juncture suggests the majority's discomfort with a constitutional right-to-welfare doctrine.

An examination of the successive drafts of the majority and dissenting opinions over the course of the two terms reveals the intra-Court bargaining over *Shapiro* and how in the second term a majority of the Court reversed itself to invalidate the durational residence requirements. It is the bargaining process that shows more conclusively than the briefs and the final *Shapiro* opinion the majority's deliberate refusal to read a right to welfare into the Equal Protection Clause. When the case was first argued in 1967, six justices, including Brennan, upheld the durational residence requirements because they agreed with Chief Justice Warren that the Court lacked the authority to impose its own views of distributive justice on state legislators. Chief Justice Warren counseled against embracing a need-centered view of Equal Protection and confounding the distinction between moral and constitutional duties. For example, the chief justice wrote in his original *Shapiro* opinion:

> To the extent that appellees have attempted to show that the durational residence requirements impose handicaps upon the poor of the Nation, *they appeal to the right instincts of all men. However, instinct cannot be our guide* when we are asked to declare unconstitutional part of a statutory scheme created by Congress against the backdrop of the depression of the 1930s and preserved unchanged despite repeated efforts to alter it.[37]

The six-member coalition unraveled, however, when, in the second term, Justice Brennan abandoned Chief Justice Warren's majority and reworked Justice Abe Fortas's original (dissenting) opinion declaring the one-year residence requirements unconstitutional. Specifically, Justice Brennan penciled in the word "compelling," for the "compelling government interest" test, where Justice Fortas argued that the durational residence laws interfered with the right to interstate travel.[38]

[37] 3 June 1968, filed in Container Number 566 in the Papers of Earl Warren. (Emphasis added.)
[38] Ibid.

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By highlighting the fundamental right to interstate migration, Justice Brennan then forced the states to demonstrate that the laws promoted a "compelling government interest"—a test the Court had always used to administer the fatal blow to a statute. When *Shapiro* was reargued the next term, Archibald Cox likewise identified interstate travel as a fundamental right eliciting strict scrutiny.

Impressed by Cox's presentation, Justice Stewart and eventually Justice White were persuaded to void the durational residence requirements as a violation of the right to interstate migration. Thus the original dissenting justices triumphed because a majority of the Court came to agree that the durational residence requirements attached to welfare benefits impinged on the fundamental right to interstate migration. Particularly revealing is the final concurring opinion by Justice Stewart. He had criticized his colleagues in *Harper* for flirting with *Lochner*, yet voted to strike down the durational residence laws in *Shapiro* once Archibald Cox and Justice Brennan emphasized the "penalty" imposed on the fundamental right to interstate migration. The *Shapiro* majority withstood political retaliation because Justice Brennan's dictum regarding "the necessities of life" was tied to the constitutionally protected right to interstate travel.

The majority's right-to-travel argument, therefore, was an unlikely pretext for a constitutional right to welfare. For there were good doctrinal and ideological reasons the majority rested *Shapiro* on the fundamental right to interstate travel, rather than on a collective duty to meet subsistence needs. The LSP counsel, Archibald Cox, the amicus curiae briefs, and the *Shapiro* majority all gave voice to the ideal of equal opportunity "to leave an old and personally unsatisfying environment in pursuit of preferred associations and opportunities for self-preservation or advancement."[39] This ideological underpinning made the right-to-interstate travel argument attractive even to a more conservative Burger Court era. As such, it is important to look at the *Shapiro* majority's interpretation of the Constitution as protecting geographic mobility and the aspiration to economic mobility that frequently impels a family to move to a new state.

Justice Brennan felt no pressure to locate the right to interstate travel in one specific clause, for "'a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.'"[40] Citing the relevant precedents in a footnote,

[39] Cox, Supplemental Brief, 88.

[40] *Shapiro*, 394 U.S. 618, 630–631, Justice Brennan, quoting *U.S. v. Guest*.

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Justice Brennan noted that the right to interstate travel found expression in several constitutional clauses, including the "privileges and immunities" vision of the United States as a "'national community'" with open borders that bars state discrimination against residents of other states. As the oral argument unfolded, the right to travel in *Shapiro* came to mean the right to reside where one chooses.

Referring to Commerce Clause precedents, the *Shapiro* majority also contended that labor must be unencumbered in its search for a market.[41] The majority agreed with the American Civil Liberties Union (ACLU) and CSWPL's amicus curiae briefs, which labeled the durational residence requirements an "invisible tariff" because "[t]he integrity of the free trade area intended by the framers of the Constitution in creating the commerce clause is seriously compromised by the '*barriers caused by restrictive residence or settlement requirements*'. . . ."[42] The vulnerability of poor people to economic dislocation or technological displacement makes uninhibited mobility particularly crucial. Interestingly, in linking the right to interstate travel with the value of a free labor market, the CSWPL and ACLU briefs read like an Adam Smith tract against England's Act of Settlement, the welfare legislation Great Britain enacted in 1662, barring parish assistance to any indigent person except official parish residents who had established a legal settlement. The Act of Settlement was a punitive measure designed to control the problem of poverty by reducing "vagrancy." The ideological significance of the CSWPL and ACLU briefs was not lost on Justice Brennan or the swing voters.

Finally, invoking the Due Process Clause of liberty, Justice Brennan quoted from a precedent that "our constitutional concepts of personal liberty unite to require that all citizens be free to travel . . . uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement."[43] Justice Stewart's concurring opinion went so far as to characterize the right to travel as "a virtually unconditional personal right. . . ."[44] Even Justice Harlan considered the right to interstate travel "fundamental" under the Fifth Amendment's Due Process Clause.

[41] Ibid., 630, fn. 8.

[42] *Amicus Curiae* brief of the ACLU, reprinted in Kurland and Casper, *Landmark Briefs*, 171. (Emphasis in original.)

[43] *Shapiro*, 394 U.S. 618, 629.

[44] Ibid., 643.

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Thus all of the justices acknowledged the right to interstate migration as embedded in the classical liberal notion of "negative freedom."[45]

Shapiro: Wealth Discrimination? Though the long constitutional history of the right to interstate travel helped to deflect criticisms that *Shapiro* constitutionalized a right to welfare, some scholars discerned in the final majority opinion a substantially more radical subtext—the wealth-discrimination doctrine. In some phrases, the *Shapiro* majority noted the "invidious distinction" between rich and poor but elsewhere focused on the state's differentiation between the in-staters and out-of-staters and between the "deserving and the undeserving poor."[46] Moreover, the majority was unclear whether the durational residence requirements were unconstitutional because they deterred or penalized the fundamental right to interstate travel. Did the majority opinion, however circuitously, grope towards the controversial notion of groups rights based on economic class?

In the various draft opinions, Justice Brennan, averse to applying the wealth-discrimination doctrine to the economic (including social welfare) realm, deliberately moderated Justices Douglas's and Fortas's wealth-discrimination assertions in order to convert Justices Stewart and White. Unlike Justices Douglas and Fortas, Justice Brennan disregarded the LSP lawyers' position that the durational residence laws discriminated on the basis of individual wealth, and he never once cited the wealth-discrimination trilogy. His omission is puzzling. First, just as the poll tax impeded the poor's right to vote, so, too, the one-year residence requirement attached to AFDC benefits made it particularly arduous for the poor to exercise the right to interstate travel. Second, Justice Fortas's characterization of the durational residence requirements as a "*material* interference with the Constitutional right to travel. . . ."[47] had prompted Justice Brennan to abandon Chief Justice Warren's coalition and to join Justices Douglas and Fortas in invalidating the durational residence requirements. Still, Justice Brennan chose to delete Justices Fortas's and Douglas's references to the wealth-discrimination doctrine and precedents.

Following Cox, Justice Brennan deradicalized Justices Douglas's and Fortas's wealth-discrimination claims by underscoring the "invidious distinction" between in-state and out-of-state indigents, rather than

[45] For the classic discussion of positive and negative freedom, see Isaiah Berlin, *Four Essays on Liberty* (New York: Oxford University Press, 1969).

[46] *Shapiro*, 394 U.S. 618, 631.

[47] Filed in Container 566, the Papers of Earl Warren. (Emphasis added.)

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between rich and poor. Neutralizing the language of class used by Justices Douglas and Fortas, Cox argued that the vulnerability of the poor lay not only in their destitution but also in their obvious lack of political representation in another state. Thus, where Justices Douglas and Fortas noted the unequal effect of the durational residence requirements on those with and without resources, Cox and then Justice Brennan stressed the Privileges and Immunities component of the right to travel: states are constitutionally forbidden from discriminating against citizen-strangers from other states.

Justice Brennan's doctrinal revisions make sense, given the ideological appeal of his position over Justices Douglas's and Fortas's. Likening the "hostile treatment of those who travel" to "racial discrimination," Cox and later Justice Brennan railed against the state-sanctioned "local prejudice" against impecunious "strangers" or "outsiders." This enabled them to recast *Shapiro* as making it "unnecessary to break new constitutional ground."[48] Hence, the linchpin of their case against the durational residence requirements was the states' denial of "formal equality" to "outsiders" who settled into their territories. Affirming the value of formal equality, rather than promoting economic equality per se, made Cox's supplemental brief and oral argument so alluring to Justices Brennan, Stewart and White.

Dwelling on wealth discrimination, in contrast, threatened to open a can of worms. Consider, for example, Justice Douglas's original dissenting opinion: "The rich and prosperous no longer stop the migrants at the border . . . but make it difficult if not impossible for the indigent to reach the community where a new life may be possible."[49] Justice Douglas cautioned the Court about the "sophisticated" means that "the rich and prosperous" use to subordinate the poor. But on this logic, a state's simultaneous slashing of corporate taxes and welfare benefits could be construed as a covert tactic of the rich to impose conditions that impair the poor's capacity to exercise their constitutional rights.[50] The use of the wealth-discrimination doctrine

[48] Transcript of Cox's Oral Argument, reprinted in Kurland and Casper, *Landmark Briefs*, 69.

[49] 12 June 1968, filed in Container Number 566, the Papers of Earl Warren.

[50] Justice Douglas was concerned about the corrupting influence of the capitalist imperative: "We have spent hundreds of millions of dollars on military projects and commercial enterprises but not a dollar on exporting those ideas fundamental to the creation of a viable democracy. . . . Our pulpits are strangely silent about this problem. . . ." Address before the Civil Liberties Education Foundation, Inc., Warrenton, Virginia, 17 November 1962, filed in Container Number 351, the Papers of Earl Warren.

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in the economic domain could render the capitalist motive itself constitutionally suspect in the face of unmet subsistence needs.

In this light, one understands why the *Shapiro* majority chose to stress the punitive over the deterrent effects of the durational residence laws.[51] The deterrence test has radical overtones, for states offering meager AFDC benefits are likely to deter many poor persons from emigrating into their jurisdictions and thus devalue the indigent's right to interstate travel. On the deterrence analysis, the only solution would be a uniform, national benefit-level—a solution that would also dismantle the cooperative-federal structure of AFDC.[52]

It appears that Justice Brennan included the penalty analysis to accommodate Justice Stewart, who regarded as the key issue the "chilling" of a constitutionally protected right to interstate travel. For him the durational residence requirements were unconstitutional, because they penalized a fundamental right, not because they resulted in the unequal enjoyment of interstate migration. In fact, Justice Stewart was quick to point out that basing *Shapiro* on the constitutional prohibition against the "penalizing" of a right brought the ruling "under the aegis of established constitutional law." Meanwhile, Justice Brennan left in the deterrence standard to berate the states for caving into societal prejudices and trying to keep out poor persons.

In sum, new archival evidence suggests that the *Shapiro* majority deliberately couched the decision in terms of the established constitutional ban on laws that "penalize" the exercise of a "fundamental right" to interstate migration.[53] Revising Justices Fortas's and Douglas's original opinions, Justice Brennan shied away from the right-to-welfare and wealth-discrimination doctrines and in effect from an egalitarian ideology oriented to meeting basic human needs or to guaranteeing relative equality in the provision of state services. Justice Brennan successfully mobilized Justices Stewart and White, the swing voters, against the durational residence requirements by grounding the decision in the right to interstate travel and espousing the classical liberal values of equal opportunity and negative freedom.

[51] For clarification of the deterrence vs. penalty test, see *Dunn v. Blumstein*, 405 U.S. 330 (1972); and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

[52] Paul E. Peterson and Mark C. Rom, "The Case for a National Welfare Standard," *The Brookings Review* (Winter 1988): 24–32.

[53] My attempts to gain information on *Shapiro* from the law clerks who worked for Justice Brennan between 1967–1969 were unsuccessful. As one of Justice White's former law clerks told me, the muckraking book *The Brethren* has made former law clerks reluctant to talk, because however neutral the information, they fear it might somehow taint their former bosses' reputations.

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Dandridge v. Williams

LSP attorneys were troubled that the well established right to interstate travel was pivotal to the poor's victory in *Shapiro*; nevertheless, they perceived in the opinion the makings of a constitutional "right to life."[54] The ruling in *Dandridge v. Williams*, however, disappointed LSP lawyers.[55] *Dandridge v. Williams* involved a challenge to Maryland's policy of capping at $250 the monthly benefits to families consisting of seven or more members. Families of five or fewer children had their benefits calibrated to family size so that, for example, a family with four children received a higher monthly check than a family with only two children. The case took its name from one of the plaintiffs in this class action suit, Linda Williams, a single mother of eight children. Williams was unable to work because of a severe medical ailment. Legal services lawyers sued Edmund P. Dandridge, the chairman of the Maryland State Board of Public Welfare, contending that the maximum family grant violated the equal protection clause. The LSP attorneys argued that the policy failed on equal protection grounds both because it deprived claimants of a fundamental right to a minimum income and because it discriminated against large families.

Justice Stewart's six-member majority rejected both claims. The majority contended that, in contrast to cases involving fundamental rights, social welfare policy elicits the deferential rational basis test, and gives the states considerable latitude in drawing legislative classifications. *Lochner* cast a shadow over the majority opinion: "For this Court to approve the invalidation of state economic or social regulation . . . would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down laws 'because they may be unwise, improvident or out of harmony with a particular school of thought.'"[56]

The *Dandridge* majority was well aware of the normative ramifications of Justice Brennan's observation in *Shapiro* that welfare assistance deals in subsistence needs. Without the presence of a fundamental right, however, the Court saw no alternative to using the reasonable basis test and upholding the Maryland regulation. Veering away from substantive questions of distributive justice, the Court focused on proce-

[54] Interview with Henry Freedman, executive director of the CSWPL, which mapped out the litigation strategy for the welfare rights movement.

[55] *Dandridge v. Williams*, 397 U.S. 471 (1970).

[56] Ibid., 484.

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dural issues. According to Justice Stewart, for example, although the "Constitution may impose certain procedural safeguards on systems of welfare administration,"[57] the "intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court."[58] Applying the reasonable basis test, the majority emphasized Maryland's "legitimate interest" in encouraging employment and maintaining an equitable balance in economic status between the welfare and the working poor; and allocating welfare assistance to as many needy families as possible.[59] Justice Stewart insisted that the Court has no power to question states' judgments of how best to allocate public welfare funds.

Justice Marshall's dissenting opinion revealed the lack of consensus among the Warren Court justices regarding the scope of constitutionally protected fundamental rights and interests. The dissenting justices, including Brennan and Douglas, objected to the majority's refusal to differentiate between welfare and business regulation. Justice Marshall presented his sliding-scale approach, evaluating the legislative classification according to the importance of the government benefit to individuals denied assistance and the governmental goals served by the classification. He cited *Shapiro* to bolster his claim that AFDC recipients' vital interest in subsistence distinguishes welfare regulation from business regulation and triggers the use of a stricter Equal Protection standard.

Justice Marshall defended his approach against the charge of "Lochnerizing" by turning the tables on the majority: ". . . the Court's insistence that equal protection analysis turns on the basis of a closed category of 'fundamental rights' involves a curious value judgment. It is certainly difficult to believe that a person whose very survival is at stake would be comforted by the knowledge that his 'fundamental rights are preserved intact'"[60] The dissents did not believe *Dandridge* embroiled the Court in a legislative-judicial battle over philosophical and political matters: "The only question presented here is whether

[57] Here Justice Stewart referred to *Goldberg v. Kelly*, a Due Process case that required state bureaucracies to grant a pre-termination hearing to welfare recipients whose benefits were slated to be cut off.

[58] *Dandridge*, 397 U.S. 471, 487.

[59] In response to the LSP lawyers' argument that the needs of the children in large families were going unmet, Justice Marshall asserted: "They'll eat along with the rest of them. It just means everybody would eat less." Transcript of the Oral Argument, reprinted in Kurland and Casper, *Landmark Briefs*, 306.

[60] *Dandridge*, 397 U.S. 471, 521, fn. 14.

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having once undertaken such a [welfare] program, the State may arbitrarily select from among the concededly eligible those to whom it will provide benefits."[61] Whereas the *Dandridge* majority perceived the maximum grant regulation as a legislative decision to distribute scarce resources while simultaneously preserving equity between the working and the welfare poor, the dissenting justices viewed the regulation as perpetrating a discrimination against children from large families and as depriving basic human needs.

So much was at stake in *Dandridge*, but neither the majority nor the dissenting side did justice to the complex issues raised by the maximum grant regulation. The budgeting and taxation dimensions of welfare policy led the majority to put AFDC on the same constitutional plane as business regulation, even though this strained each justice's moral sensibilities: "The administration of public welfare assistance . . . involves the most basic economic needs of impoverished human beings. We recognize the dramatically real factual difference between. . . ." welfare and business policies.[62] Still, the majority found no doctrinal foundation to support the indigent appellees.

Conversely, the dissenting justices were flippant about judicial incursion into the legislative province of budgeting and taxation. Justice Marshall so casually distanced *Dandridge* from *Lochner* that he repeatedly undermined his own position. In one statement, he attempted to reduce *Dandridge* to the procedural question of "whether, having once undertaken such a [welfare] program, the State may arbitrarily select from among the concededly eligible those to whom it will provide benefits."[63] But earlier in the opinion, he argued that welfare cases trigger "stricter constitutional standards, both procedural and *substantive*."[64] Further, he relegated to footnotes the weighty question of whether welfare benefits are a constitutionally protected right and attempted to turn the heated debate over the constitutional status of welfare benefits into a semantic squabble: ". . . whether or not there is a constitutional 'right' to subsistence. . . ."[65] However intuitively appealing, Justice Marshall's sliding-scale approach skirted troublesome questions.

[61] Ibid., 525.
[62] Ibid., 485.
[63] Ibid., 525.
[64] Ibid., 522. (Emphasis added.)
[65] Ibid., 523, fn. 18.

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Surely, identifying welfare benefits as a constitutional right would extend the Supreme Court's power beyond a procedural mandate of guaranteeing the even-handed administration of a state-created good among those who qualify. A constitutionally guaranteed right to welfare would cordon off the sphere of security from the market and insulate welfare issues from democratic decision making. For example, a low-wage, single male worker living at the poverty line would have a constitutionally enforceable right to welfare benefits, despite not falling within a statutory category of eligible recipients.[66] The result—judicial dismantling of the categorically-based welfare system—would endorse a value-laden judgment about the proper boundary between a welfare system and a market economy. All the same, Justice Marshall struggled to cast *Dandridge* in the familiar mold: legislative determination of need, a substantive judgment, and judicial vigilance over welfare administration, a procedural judgment ensuring evenhandedness.

Dandridge, however, could not be easily tailored to fit the Equal Protection precedents extending equal justice, equal political representation, and the right to interstate travel to all citizens, whether rich or poor. These cases forced state governments to live up to the internal logic of their own institutions, forbidding discrimination against the economically disadvantaged. But, the very logic behind the American welfare system deliberately excludes the able-bodied poor. By contrast, the implication of Justice Marshall's argument is to distribute welfare benefits to every needy citizen, a political change that requires considerably more downwardly redistributive welfare policies than existed anywhere in the nation.

Justice Marshall's attempt to fit *Dandridge* in the proceduralist mold was probably a rhetorical tactic to integrate the case with established constitutional law. But this effort was dogged by the procedure/substance dichotomy in constitutional law, which manifests the distinctively liberal understanding of civic obligations as those that are undertaken voluntarily. The major obstacle to judicially-mandated redistributive policies is the perception of coercion. In a society that elevates individual liberty to other values, consent is a precondition of political obligation. Citizens' consent is commonly thought of as expressed through elected officials.

[66] The main categories are the aged, blind, disabled, and families with no breadwinner. At the time *Dandridge* was decided, there was a lively political debate over the virtues of a negative income tax versus the categorically-based welfare system that is still in existence.

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The political maneuvering behind Maryland's maximum grant regulation illustrates the problem of consent in welfare provision. The state's attorney admitted that the regulation was implemented in order to quell Maryland residents' political opposition to AFDC. The procedure/substance distinction in constitutional law holds that legislators enact laws accommodating majority sentiment. Judges make sure the process resulting in the legislation is fair but remain otherwise neutral about the particular values chosen.

Of course, Justice Marshall quipped that the denial of adequate welfare assistance to children of large families cannot be used as a bargaining chip in exchange for the political acquiescence of the tax-conscious middle class. In a constitutional democracy, individual rights trump legislative deal-making by dominant political coalitions. Given the tenacity of the fundamental rights/economic policy dichotomy in Equal Protection review, however, it was not enough for Justice Marshall to respond that rights trump legislative deal making. The dissenting justices tried to forget that *Dandridge* was, inescapably, about substantive judgments regarding the constitutional value to be assigned to welfare benefits and, more philosophically, the kind of political association the United States is to be.

The importance of *Dandridge* lay not only in the Supreme Court's refusal to constitutionalize a right to welfare, but also in the reinforcement of the boundary between the realm of individual rights and the realm of economic and social policy: "For here we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments. . . ."[67] Insofar as the Court implied that the inequalities spawned by the market economy are constitutionally irrelevant outside of the delineated sphere of protected rights, the justices gave voice to the Lockean tenet concerning the compatibility of civic equality with private economic inequality. While the Warren Court expressed its alarm at ways in which poverty erodes the poor's constitutional rights in *Griffin*, *Harper*, and *Shapiro*, *Dandridge* reflected the classical liberal tendency of divorcing the content of rights from the capacity to exercise them. *Dandridge* exposed the frailty of the new Equal Protection in the economic domain and its inadequacy in addressing the so-called paradox of poverty amidst plenty.

[67] *Dandridge*, 397 U.S. 471, 484.

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Conclusion

The foregoing analysis of four landmark Equal Protection decisions reveals the influence of constitutional doctrines, classical liberal norms, and intra-Court bargaining on the Warren Court. Specifically, the Warren Court's Equal Protection doctrines reflect a particular ideological structure: the separation of fundamental rights from economic policy and subsistence needs, of civil and political equality from economic inequality, and of procedural from substantive justice. The argument presented here challenges one of the prevailing arguments in the literature that construes the Warren Court's Equal Protection rulings as a "gigantic umbrella and blueprint for transferring political services from Republican to Democratic clienteles."[68] The irony is not that the "Republican" Warren Court handed down so many egalitarian rulings,[69] but that the classical liberal underpinnings of the new Equal Protection reined in a Court whose majority believed in a government obligation to alleviate the poor's suffering. In the intra-Court bargaining to build a majority coalition, the doctrinal and ideological pressures led Justice Brennan to rest *Shapiro* on the right to interstate travel, rather than on a right to welfare.

These doctrinal and ideological constraints mitigated so-called results-driven voting on the Warren Court.[70] The double standard, elevating rights to economic and social policy, grew out of the New Deal legitimation of government intervention in the economy. But the legacy of *Lochner* made the Warren Court averse to incorporating a substantive right to welfare into the Constitution. For example, the chief justice and Justices Stewart and White, although personally sympathetic to the idea of a government duty to assist the needy, rejected a constitutional right to welfare. By the late 1960s, the double standard functioned not to shore up the New Deal coalition but to fortify classical liberal norms that circumscribed judicial protection of the poor against poverty. The new Equal Protection ultimately ceded to the classical liberal priority of individual liberty over equality.

The preceding analysis calls into question the party-realignment model, which dismisses the debate over judicial activism versus judicial restraint as "irrelevant to the actual configurations of political power

[68] Martin Shapiro, "The Supreme Court: From Warren to Burger," 193; also, see Funston, "The Supreme Court and Critical Elections," 803.

[69] Ibid., 193-194.

[70] Martin Shapiro argued that the Warren Court's liberal bloc cared only about reaching the policy outcomes it desired. See, ibid., 201.

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within the American constitutional system" except in times of party realignment.[71] Legal doctrines rest on assumptions about the proper role of the Supreme Court in a democratic polity. The new Equal Protection doctrines posited a judicial duty to defer to legislatures on economic matters but to strike down laws infringing on fundamental rights or discriminating against minority groups. Because political ideology and intra-Court bargaining mediate these doctrines, however, justices interpret fundamental rights differently and sometimes change their votes in the course of judicial deliberation. Constitutional doctrines do not change with every shift of the political winds.

The attitudinal model is also widely used to study judicial decision making. Conceptualizing attitudes and values as exogenous, this model assumes that judges bring to the bench well formed political attitudes and values that are relatively impervious to institutional dynamics.[72] The model thus ignores a distinctive institutional feature of the Supreme Court—its deliberative character. A more precise account of judicial behavior should consider how the deliberative process redefines or reinforces justices' political attitudes and role orientations, for "decision outcomes are not merely the collective expression of individual attitude or policy preferences."[73] As we saw in *Shapiro*, judicial deliberation is influenced not only by the existing doctrines and ideologies but also by the process of consensus building on the Court.

As discussed at the outset, Rogers Smith attempted to link normative and political jurisprudence by urging the use of a common conceptual vocabulary, that is, identifying enduring institutional structures as independent variables and judicial decisions as dependent variables. This article has explained the impact of a particular set of legal ideas—

[71] Funston, "Supreme Court," 809.

[72] Goldman, "Voting Behavior on the U.S. Court of Appeals Revisited"; Nagel, "Political Party Affiliations and Judges' Decisions."

[73] Melinda Gann Hall and Paul Brace, "Order in the Courts: A Neo-Institutional Approach to Judicial Consensus," *Western Political Science Quarterly* 42 (September 1989): 394. In his study of three federal circuit courts, J. Woodford Howard, Jr. concluded that the effect of professional and political values are mediated by "personal, group and situational factors." Howard, "Role Perceptions and Behavior in Three U.S. Courts of Appeals," 934. Environmental factors can also affect judges' attitudes. For example, Kritzer's study of federal district judges found that although judicial attitudes are important determinants of judicial decision making, "political variables external to the judicial system," such as the local political culture, local elite environment, and the national political environment, "were the most important correlates of the actions of federal district judges in draft resistance cases. . . ." Kritzer, "Political Correlates of the Behavior of Federal Distinct Judges: A 'Best Case' Analysis," 57.

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the Warren Court's new Equal Protection doctrines—on judicial decisions regarding indigents. It has shown the analytic utility of legal doctrines as an independent variable that includes judicial role orientations. For example, Justice Black believed that without explicit textual support there are no rights to vote and interstate travel. Concurring that the right to vote in a state election is not an Equal Protection guarantee, Justice Stewart admonished his colleagues against using the fundamental rights doctrine to masquerade their own personal and subjective disdain for the poll tax. Yet, he believed that the right to interstate travel, although not codified in the Constitution, is a virtually unconditional personal right. Although usually perceived as the most liberal on the Court, Chief Justice Warren believed that the Court had no license to turn welfare into a constitutional entitlement, even though he felt poverty rightly weighed on the nation's conscience.

One might also conceive of political ideology and intra-Court bargaining as intervening variables. As we have seen, the legacy of *Lochner* figured largely in shaping the doctrinal categories of the new Equal Protection and the deliberation over indigents' rights. Yet, the doctrines were not themselves always decisive; while acknowledging a category of fundamental rights, justices disagreed over which rights are fundamental for Equal Protection purposes. Political ideology and intra-Court bargaining clearly mediated between the legal doctrines and the decisions. For the centrist and the conservative justices, a constitutional right to welfare constitutes judicial coercion; for the left-of-center justices, it is indispensable to the exercise of civil and political rights.

The influence of these ideologies, however, is not constant. The Court is a collegial body that operates by majority vote, which necessitates deliberation and negotiation. The intra-Court bargaining over the wealth-discrimination and right-to-welfare doctrines exposed the ideological struggle among the justices, with the final *Shapiro* opinion reflecting the doctrinal power of the right to interstate travel and the ideological appeal of negative over positive freedom. It is ideologically revealing that a majority of the Warren Court identified voting, but not welfare, as a fundamental right, because it is preservative of civil and political rights; identified interstate travel, not welfare, as essential to preserving human freedom; and regarded poverty as tainting the criminal and democratic processes but not as so patently unjust as to sully constitutional principles.

While taking issue with the main approaches to political jurisprudence, this article has proposed ways to bridge the gulf between norma-

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tive and political jurisprudence. Toward this end, three recommendations may be fruitful: First, empirical indices should be developed to test the influence of constitutional doctrines and political ideology vis-à-vis attitudes and role conceptions. One can then measure the sensitivity of the attitudinal model to the nuances of legal doctrines and to the deliberation and bargaining that redefine or reinforce justices' attitudes and affect their votes.

Second, constitutional doctrines and political ideology should be examined in terms of their relevance to theories of small-group decision making. Small-group theory investigates the internal bargaining among justices and hypothesizes conditions under which a minimum winning or larger coalition is likely to prevail. This article examines the ideological dimension of judicial deliberation and bargaining, which constitute the nexus of small-group theory. Future scholarship might analyze the salience of constitutional doctrines and ideology in intra-Court debate and negotiation, especially in the shifts in votes of the swing justices. Such research might then generate hypotheses about the conditions under which a Court's final vote is likely to reverse the conference vote.

Third, this article illustrates the potential usefulness of the concept of party dealignment. A process of party dealignment is said to have been under way in the United States at least since the mid-1960s. Far from strengthening the New Deal coalition, the Warren Court's decisions put strains on it. From school prayer, to school desegregation, to pornography, Supreme Court decisions pitted blue-collar white ethnics against blacks and liberals. For example, a "liberal" decision like *Stanley v. Georgia*, allowing the possession of "obscene" pornographic films in the privacy of one's home, was not self-evidently a New Deal victory because of its appeal to civil libertarians and intellectuals worried about freedom of speech. It is more accurate to note the pressure that *Stanley* put on the New Deal coalition by violating the moral values of Catholics and other religious groups. Thus, party dealignment may be a more useful concept than party realignment in explaining post-1965 Supreme Court decisions. Many of the Warren Court's decisions represented not so much a judicial consolidation of the New Deal coalition as a formidable test of the internal cohesion and strength of the Democratic party.*

* I wish to thank Jeffrey B. Abramson, Sung-il Choi, Jennifer L. Hochschild, and R. Shep Melnick for their helpful comments on an earlier draft of this article.

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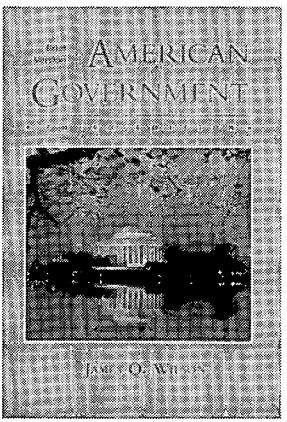

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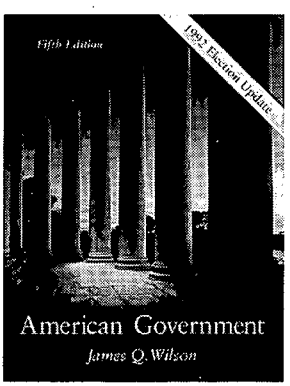

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Judicial Review of Regulatory Decisions: The Changing Criteria

ROBERT B. HORWITZ

In 1981, in a case called *FCC v. WNCN Listeners Guild*, the Supreme Court put to rest a decade-long battle between the District of Columbia Circuit Court of Appeals and the Federal Communications Commission (FCC).[1] On the surface, this struggle between the nation's second most important judicial tribunal and a federal regulatory agency entailed simply a conflict over radio station format changes. Could a broadcast licensee's decision to change a radio format (from, say, classical to rock and roll) be challenged before the overseeing regulatory agency? The FCC said no; the Court of Appeals said yes.

The radio format cases all had the same essential fact situation. A radio station would be sold (in the official lingo, a radio license would be transferred), and the new owner would change the program format. Listening audiences rebelled, formed interest groups, and petitioned the FCC to void the license transfer or require that the new owner keep to the old format. The FCC invariably refused to hold hearings, arguing that the choice of program formats is one for the judgment of the broadcast licensee. The Court of Appeals consistently ruled otherwise, arguing in effect that the public interest in diverse voices required the FCC to take a "hard look" at any contested format change.

[1] *Federal Communications Commission v. WNCN Listeners Guild*, 450 U.S. 582 (1981).

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Indeed, the court (sitting en banc) criticized the FCC's reliance on marketplace economics to regulate formats.[2] The court directed the FCC to identify sufficient public protest, determine the intrinsic financial viability of the original format, and decide when a format was or was not unique. For more than a decade the FCC resisted the Court's directives. And in *FCC v. WNCN Listeners Guild* the FCC was vindicated. The Supreme Court rejected the appellate court's logic, arguing not only that the FCC's reliance on market forces to develop diversity in programming was reasonable but, pointedly, that Congress delegated to the FCC the task of implementing the public interest standard, *not* to the Court of Appeals.

Beneath the narrow issue of radio format changes, the conflict between the Court of Appeals and the FCC was part of a larger battle over the conception of the regulatory agency and the proper role of the courts in judicial review. Was the regulatory agency an expert body, armed with technical expertise and charged with determining the public interest in an objective (for lack of a better word) fashion? Or, rather, was the regulatory agency to be viewed more as a forum of interest representation, where the public interest would be arrived at through a participatory decision-making process to which all the relevant groups had appropriate access? Underlying these conceptions of regulation rest two perhaps mutually exclusive conceptions of truth and rationality—a contest between visions of truth as technical rationality (that is to say, instrumental action governed by supposedly neutral technical rules based on empirical knowledge) and of truth as intersubjectively determined consensual norms derived through a participatory politics.[3] The recent history of American administrative law has swung between these two conceptions of regulation.

Administrative law determines the character of court participation in the process of regulatory policy making. A subset of the separation of powers doctrine, administrative law is an important (though often neglected) area, because not only do courts have final say over regulatory decisions—where most public policy is carried out—but in complex fashion one can trace in the shifts in administrative legal doctrine much of the political history of the twentieth-century United States. This article discusses the changes in administrative law and looks at their paradoxical consequences for the judicial treatment of deregulation.

[2] *Citizens Committee to Save WEFM v. FCC*, 506 F.2d 246 (D.C. Cir. 1974).

[3] See Jurgen Habermas, *Toward a Rational Society* (Boston: Beacon Press, 1970).

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Concretely, administrative law speaks to the relationships between Congress, the courts, and the executive, and specifies the procedures regulatory agencies must follow. It addresses the terms of standing (that is, who possesses the right to intervene in agency proceedings and, more important, who has the right to seek judicial review) and the concrete criteria for the judicial review of regulatory decisions. Depending on the vision of the role of the regulatory agency, the terms of standing, the standard of judicial review, and the scope of judicial intervention would be quite different. The traditional view of the expert regulatory agency, a view that took hold in the New Deal and held sway until the mid to late 1960s, was characterized by restricted standing and judicial deference to agency decisions. In the wake of the political upheaval initiated by the Civil Rights movement, the New Deal model of regulation gave way to the participatory view. The regulatory agency was now seen not as expert but as a forum for interested parties to debate and determine the public interest. The change resulted in quite unintended consequences, indeed, in political paradoxes. The liberalization of standing was accompanied by strong judicial oversight of agency proceedings. Together, liberalized standing and strong judicial oversight were major factors in the regulatory ferment of the late 1960s/early 1970s, and for that reason business and conservatives attacked the "imperious" judiciary. Ironically, however, the same standard of judicial review also underlay the courts' prodding of agencies to consider deregulation as a policy option.

After a decade or so of experimentation with the participatory model of regulation, by the 1980s the Supreme Court began resurrecting the expertise model with decisions like *FCC v. WNCN Listeners Guild.* The Court struck a compromise standard of review, combining elements of the expertise and participation models and placing great weight on the specific nature of the agency's legislative mandate. The compromise standard of judicial review, while at first glance a realization of the conservative reaction against the so-called imperious judiciary, ironically accounts for the distinctly checkered judicial treatment of deregulation. Generally speaking, and to the dismay of the Reagan administration, the courts affirmed the deregulatory policies of the New Deal economic regulatory agencies and rejected or modified the deregulatory actions of the health and safety (social) agencies. Such paradoxes reveal the changes in administrative law to be the result of a complex interplay between the forces of politics and the often independent internal judicial debate over legal doctrine.

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Early Judicial Review: The Rejection of Administrative Law

The degree of discretion on the part of regulatory agencies has been a central problem in the history of American administrative law. Both the boon and bane of regulation by administrative agencies is the fact that such agencies combine executive, legislative, and judicial functions in a single, appointed body that sits continuously and rules informally. To traditional supporters of regulatory agencies, the complexity of modern socioeconomic life necessitates state intervention through administrative regulation. Administrative policies are seen as legitimate by virtue of the impartial expertise of regulators. To their detractors, regulatory agencies are faceless bureaucracies that exercise broad authority without being accountable to the electorate. They are, to use a phrase in vogue during the New Deal, a "headless, fourth branch of government." Regulatory agencies thus are held to violate the separation of powers laid out by the Constitution.

There have been three waves of regulatory genesis in the United States, each period characterized by a crisis of some kind and each period establishing regulatory agencies of a distinct type. Accompanying each period of regulatory creation was a model of administrative law and an implicit theory of the public interest embedded in that model. As one scholar has argued, administrative law doctrines are the legal institutionalization of political theories that concern the balance between governmental authority and private autonomy.[4] Late nineteenth-century liberal theory rejected administrative law, which is to say it rejected a notion of a public interest over private interests. Disputes between government and the individual were to be treated like other legal disputes—as private law matters where the judge would treat both parties as equal. Hence, early judicial review (primarily of the Interstate Commerce Commission [ICC], which had been established in 1887) was harsh and constraining. Following the legal doctrines of nondelegation and constitutional limitations, courts ruled that administrative sanctions on private individuals (including, according to the legal fiction, corporations) must be authorized by legislatures.[5] During this early period, the courts essentially reprivatized

[4] Martin Shapiro, "On Predicting the Future of Administrative Law," *Regulation* 6 (May–June 1982): 18–25.

[5] See Thomas M. Cooley, *A Treatise on Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* (Boston: Little, Brown, 1871); John Dickenson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, MA: Harvard University Press, 1927).

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the new public law by seizing judicial review power over rate-setting and other agency actions and then treating the rights of private parties seeking review as constitutionally superior to the interests of government. This model of review meant that agency discretion would be firmly contained by courts requiring specifically delegated legislative directives.[6]

Throughout the Progressive Era (1900–1917), the ideology of public administration and associated ideology of impartial expertise gained ascendance. The Progressive Era, a period characterized by a great deal of social and political unrest (caused ultimately by the transformation of the economy by the large corporation) saw the creation of administrative agencies to formulate the macro rules for economic competition: the Federal Trade Commission (FTC) and Federal Reserve Board, the governmental mechanisms for prosecuting antitrust, and expansion of the ICC's powers. Many social historians point to this as the era wherein a rising new middle class—to wit, the new white-collar professionals—were able to articulate a viable ideology of expertise, nonpartisanship, and technocratic rationality.[7] According to this ideology, the identification and rectification of social problems was a matter of value-free scientific apprehension and the application by experts of technical rules based on empirical knowledge.

By the time of the New Deal, this ideology of expertise had entered into the discourse of the Roosevelt Democrats. The Depression necessitated bold political action through administration. The New Dealers claimed that legislatures were incapable of dealing consistently and continuously with complicated problems. If one must regulate the economy, experts and specialists should do it cooly and rationally. According to the increasingly accepted philosophy of public administration, legislatures should lay down general (political) principles, which are then to be carried out impartially by those experts who actually know the field. Expertise would alleviate the problem of agency discretion and the fact that agency commissioners were not elected.[8]

[6] Richard B. Stewart, "The Reformation of American Administrative Law," *Harvard Law Review* 88 (June 1975): 1669–1813; also Shapiro, "On Predicting the Future of Administrative Law," 20.

[7] See, for instance, Samuel Haber, *Efficiency and Uplift: Scientific Management in the Progressive Era, 1890–1920* (Chicago: University of Chicago Press, 1964); Samuel P. Hays, *Conservation and the Gospel of Efficiency* (Cambridge, MA: Harvard University Press, 1959); Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (Berkeley: University of California Press, 1977).

[8] See James M. Landis, *The Administrative Process* (New Haven: Yale University Press, 1938); Walter Gellhorn, *Federal Administrative Proceedings* (Westport, CT: Greenwood Press, 1941).

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The expansion of regulation in the New Deal brought the theory of administrative law to a crisis, particularly because the new, independent regulatory commissions of the period (such as the FCC, Civil Aeronautics Board, Securities and Exchange Commission, National Labor Relations Board) were vested both with tremendous amounts of discretionary power and vague mandates. Holding on to the nondelegation doctrine and the older, individualistic model of rights rooted in private law, the Supreme Court rejected the New Deal logic of expert intervention in the famous 1935 case of *Schechter Poultry Corp. v. United States*. In *Schechter*, the Court struck down the National Recovery Administration's effort to cartelize hundreds of industries as an improper delegation of legislative powers to the executive and an unconstitutional regulation of interstate commerce. Two years later the Court reversed that logic, accepting the principle of agency intervention and the more statist model of rights in *NLRB v. Jones & Laughlin Steel Corp.*[9] Moreover, the effect of *Humphrey's Executor v. United States* (a 1935 case in which a unanimous Court upheld a statute that insulated an FTC Commissioner from removal by the president) was to endorse the constitutionality of the independent regulatory commissions.[10] These commissions were comprised of several commissioners appointed by the president but answerable to Congress and directly funded by Congress. Indeed, *Humphrey's Executor* characterized the commissions as being wholly independent of the executive branch except for the president's power of appointment. With these cases, the courts accepted the expertise model of regulation, and that acceptance marked the ascendance of a pragmatic approach to government championed originally by Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis. In that pragmatic view, the separation of powers had a fair degree of latitude. The fact that independent regulatory agencies did not fall exclusively into any of the three constitutional branches of government was of no great importance.[11]

The New Deal Model: The Expert Agency

The key feature in the new criteria of judicial review was the deference of the courts. Indeed, with the New Deal, the regulatory agency itself

[9] *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). On the different models of rights, see Jerry L. Mashaw, "'Rights' in the Federal Administrative State," *Yale Law Journal* 92 (June 1983): 1129–1173.

[10] *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

[11] On the separation of powers issue and the independent commissions, see Geoffrey P. Miller, "Independent Agencies," *The Supreme Court Review* (1986): 41–97.

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was seen as the embodiment of the public interest. Adhering to the New Deal notion of the regulator as professional, expert, and objective assessor of the public interest, the reviewing courts held to an "arbitrary and capricious" standard of review.[12] The standard of review refers to the kind of analysis and degree of deference applied by a court when reviewing a regulatory action. In the New Deal administrative law tradition, the arbitrary and capricious standard was fairly narrow, requiring only that agency actions demonstrate a minimum of rationality—that they have a rational basis in law. Under the so-called minimum rationality or rational basis test, agency policy choices would be upheld as long as they were not wholly irrational. This meant that in informal agency action—so long as administrative procedures had been proper, were not irrational, and did not entail the abuse of discretion—reviewing courts would generally uphold the agency's decisions.[13] Because there was no record requirement for informal rulemaking, informal decisions could not be invalidated on evidentiary grounds. Formal rulemaking did require a record and hence received a related, purportedly more strict standard of review known as the substantial evidence standard. If there was substantial evidence in the record as a whole to support the agency's order and the policy met a minimum rationality—that is, there was evidence to persuade a reasonable person that the order was right—the reviewing courts would defer.[14] Together, the arbitrary and capricious and substantial evidence standards usually meant judicial deference to regulatory decisions—until the 1960s. The standards were built on a fundamental acceptance of the agency as expert, the notion that the agency was the arbiter of an objective, value-free technical rationality. Judicial review was simply to protect the autonomy of regulated parties by requiring that agencies act with general fidelity to congressional purpose and in accordance with general due process.

With the New Deal model of judicial review, the courts accepted two crucial changes from the earlier hostile treatment of regulation.

[12] This standard was codified in the 1946 Administrative Procedure Act (APA). The APA allows courts to set aside an agency action if such action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706 (1976).

[13] U.S.C. § 706(2)(A) (1982); *Pacific States Box & Basket Co. v. White*, 296 U.S. 176 (1935). See Merrick B. Garland, "Deregulation and Judicial Review," *Harvard Law Review* 98 (January 1985): 532–533.

[14] 5 U.S.C. § 706(2)(E) (1982); *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111 (1944); *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951). See also Martin Shapiro, "The Supreme Court's 'Return' to Economic Regulation," *Studies in American Political Development* 1 (1986): 91–141.

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First, the courts accepted that regulatory agencies would adjudicate issues and formulate policies in which private interests would be subordinated to an asserted public interest. Second, in the courts' eyes, the impartial expertise of agency personnel put the agencies in the position of determining the public interest. Again, the regulatory agency itself was seen as the embodiment of the public interest. While the New Deal model of judicial review clearly accepted the principle of a public interest, a major element of the actual review process still was directed at protecting private autonomy by curbing arbitrary agency power. In other words, once the legitimacy of the regulatory agency was accepted, the major concern was the control of agency discretion. To this end, judicial review established what were essentially procedural safeguards for regulated parties—even though the arbitrary and capricious standard of review (for that matter any judicial review of agency decisions) is arguably a substantive review inasmuch as it compels the court to assess the rationality of agency determinations. Agency rules have always been judged according to the procedures of rulemaking and the substance of the rules themselves.

To a certain extent, because of the ideology of expertise and its acceptance by the judiciary, standing before regulatory agencies was restricted to those parties with a substantial (read, property) interest affected by government action. The interests of those without property interests, without standing, by definition were considered protected by the regulatory agency itself. This notion was consonant with the standard Progressive historiographic interpretation of regulatory agencies as the victory of the people over the vested interests. If regulatory agencies represented the institutionalization of the spirit of democratic reform, they themselves were the public interest. However, the actual practice of regulation was something different. After an initial burst of activity, regulation often thereafter seemed ineffectual. Sometimes regulatory agencies appeared to act in the interests of the parties they regulated. To a degree, the procedural safeguards of the New Deal model of judicial review and the 1946 Administrative Procedure Act (APA) contributed to this.

The question as to whether regulatory agencies act in the interests of those they regulate cannot be answered in general or in the abstract; and this question is beyond the scope of this article. Notwithstanding the many incidental benefits of regulation, business often experienced regulatory controls as burdensome and oppressive, precisely because such controls placed limitations on business autonomy. Hence many

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businesses revolted against regulation or at least against its supposed excesses. The APA was sponsored by the American Bar Association and was generally backed by regulated industries in the late-1940s' conservative reaction to the New Deal. The APA was a political solution to the potential problem of agency discretion by enacting extensive procedural safeguards. Put less neutrally, if businesses could not roll back the New Deal, at least they might reduce the power of regulatory agencies by increasing their own procedural rights.

Among other things, the APA pushed agency hearings to assume an adjudicatory model along the lines of normal court trials. The APA created several separations of functions within regulatory agencies. Staffs were insulated from other parts of the agency during adjudicatory matters. In attempting to construct a dichotomy between adjudication and rulemaking functions, the APA removed hearing officers from their former positions as agents of the agencies and gave them the status of judicial officers. The APA obliged regulatory agencies to provide notice of potential rule changes and invite comment from parties with standing. The APA greatly expanded the ability of aggrieved parties to attain hearings before agencies and in the courts. To the extent that these procedural safeguards protected the rights of regulated parties, they also contributed both to the formalization of agency action and to agency bargaining with regulated parties because bargaining might preclude judicial challenge and the long review process.[15]

The Emergence of an Interest Representation Model of Regulation

To lay at the courts' doorstep the reasons for regulatory ineffectuality clearly is an overstatement. Agency incompetence, clientelism, and—most important—the structure of regulation were more direct factors in this process. Nonetheless, it was the restrictive nature of legal standing that made the regulatory arena essentially a closed forum for the resolution of intraindustry conflicts, an arena where government bestowed benefits to selected industries. This closed forum for regulated industries came under attack by political activists and scholars in the

[15] On the politics of the APA, see Frederick F. Blachly & Miriam E. Oatman, "Sabotage of the Administrative Process," *Public Administration Review* 6 (Summer 1946): 213–227. On the practice of agency bargaining, see Theodore J. Lowi, *The End of Liberalism* (New York: Norton, 1969).

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1960s as evidence of the capture of regulatory agencies. Capture, of course, meant that a particular interest group exercised control over the regulatory agency. At the very least, capture theory embodied the claim that regulatory agencies served the interests, if not at the behest, of regulated industries. By the mid-1960s, some version of capture theory approached the status of conventional wisdom among social scientists.[16] Within the growing liberal, public interest political movement, capture theory was *the* conventional wisdom. And capture theory implicitly became accepted by key members of the judiciary as well—as is illustrated in the logic of two precedent-setting cases: *Scenic Hudson Preservation Conference v. Federal Power Commission* and *Office of Communication of the United Church of Christ v. Federal Communications Commission*.[17] In these decisions, courts liberalized the criteria for standing in regulatory matters because judges, increasingly attuned to the concerns of new social movements and their critique of regulation, came to doubt the expertise model.

In each of the cases, the regulatory agency had arrived at policy decisions that were so embarrassingly one-sided and pro-industry that the reviewing court directed the agencies to consider the arguments and interests of other than industry groups. In *Scenic Hudson*, the Federal Power Commission (FPC) had granted Consolidated Edison of New York a license to construct an enormous hydroelectric power project on the scenic upper Hudson River. The project aroused grave concern among conservationist groups and adversely affected municipalities, but the FPC declined to hear their arguments, asserting that these groups had no standing to petition the agency. In *United Church of Christ*, the FCC had renewed the broadcast license of WLBT, a racist Jackson, Mississippi television station. Among other things, the station had consistently urged support for racial segregation and refused requests for time to present opposing viewpoints. WLBT cut its network program feed when the network happened to air anything on civil rights or the protests connected to them. When the NAACP

[16] The classic statement is Marver H. Bernstein, *Regulating Business By Independent Commission* (Princeton, NJ: Princeton University Press, 1955); also, John Kenneth Galbraith, *The Great Crash* (New York: Houghton-Mifflin, 1955); G. Cullom Davis, "The Transformation of the Federal Trade Commission, 1914–1929," *Mississippi Valley History Review* 54 (December 1962): 437–455; Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900–1916* (New York: The Free Press, 1963).

[17] *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966); *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966).

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and United Church of Christ petitioned the FCC, urging it to deny renewal of the station's license, the commission denied the standing of those groups. In a pointed decision, the court strongly affirmed the standing rights of the citizens groups and in remand directed the FCC to take their interests and arguments into account.

In both of these cases the court explicitly expanded standing rights and implicitly cast doubt on the model of the expert agency. As the court wrote in *United Church of Christ:*

> The theory that the Commission can always effectively represent the listener interests in a [broadcast license] renewal proceeding without the aid and participation of legitimate listener representatives fulfilling the role of private attorneys general is one of those assumptions we collectively try to work with so long as they are reasonably adequate. When it becomes clear, as it does to us now, that it is no longer a valid assumption which stands up under the realities of actual experience, neither we nor the Commission can continue to rely on it. The gradual expansion and evolution of concepts of standing in administrative law attests that experience rather than logic or fixed rules has been accepted as the guide.[18]

By the early 1970s, capture theory was as much as explicitly referenced in a few court decisions. For example, in *Moss v. Civil Aeronautics Board*, a case about regulatory-determined airfares, Judge J. Skelly Wright, writing for the DC circuit, opined:

> This appeal presents the recurring question which has plagued public regulation of industry: whether the regulatory agency is unduly oriented toward the interests of the industry it is designed to regulate, rather than the public interest it is designed to protect. Petitioners, some 32 congressmen, alleged that the Civil Aeronautics Board, in considering the lawfulness of increases in domestic passenger fares filed by all the major air lines, excluded the public from *ex parte* meetings with representatives of the air line industry and then held a *pro forma* hearing limited to oral argument, as a result of which changes in the fare structure resulting in a six per cent rise in domestic fares were unlawfully approved. . . . We hold that the procedure used by the Board is contrary to the statutory rate-making plan in that it fences the public out of the rate-making process and tends to frustrate judicial review.[19]

Just as the opinion veers very close to capture theory, it also implies that citizen participation in the regulatory process and judicial review

[18] *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966), at 1003–1004.

[19] *Moss v. CAB*, 304 F.2d 891 (D.C. Cir. 1970), at 893. See also *United States v. CAB*, 511 F.2d 1315 (D.C. Cir. 1975), an opinion in which the court deemed airline regulation "severely anticompetitive."

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of regulatory policy facilitate the public interest. While the expansion of standing reflected an implicit judicial acceptance of capture theory, it did not mean that judges shifted from a pro-business to an antibusiness outlook. That is to say, the new law of standing was not a veiled expression for ideological preferences on economic matters.[20] Rather, the expansion of standing must be seen in conjunction with a judicial change in the notion of the public interest.

The regulatory arena became conceived not as one where the public interest was determined by an expert agency but rather as a forum for interest representation, where the public interest would be arrived at through a decision-making process to which all relevant groups had appropriate access.[21] In other words, the court implicitly acknowledged that there was no such thing as a singular objective public interest. For instance, in *Scenic Hudson* the court asserted that the public interest implicated not just needs for hydroelectric power but aesthetic, conservational, and recreation needs as well. And the Federal Power Commission by extension could not by itself protect this expansive, yet concretely undetermined public interest.[22] The expansion of standing not only encompassed an implicit recognition of capture theory *qua* theory, it reflected the general demands for political participation (raised first by the Civil Rights movement) that constituted the underlying social basis of the capture critique of regulation. The expansion of standing rested on the recognition that legitimately affected parties had been left out of the regulatory process. Hence, like the creation by the courts of justiciable civil rights or the newly recognized property rights in the area of government entitlements, the liberalized requirements for standing should be seen as a part of the general expansion of due process rights inaugurated by the Warren Court.

Both the expansion of standing and due process rights were fueled by and in turn refueled the demands of groups left out of the political process hitherto. In other words, political activism, not just intellectual currents, plainly underlay the liberalization of standing.[23] What all

[20] Karen Orren, "Standing to Sue: Interest Group Conflict in the Federal Courts," *The American Political Science Review* 70 (September 1976): 723–741.

[21] See Stewart, "The Reformation of American Administrative Law."

[22] *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), at 616.

[23] This is a somewhat different argument from that put forward by Martin Shapiro. Shapiro states that the group theory of politics that emerged in the 1950s (that American politics consisted of ever shifting coalitions of interest groups) had become orthodoxy by 1960. Because administrative law represents the institutionalization of political theory, albeit with a decade time-lag, the courts adopted the new group theory of the public interest. But the transformation identified by Shapiro seems bereft of agency; he seems to see legal change as merely internal, conceptual, rather than the

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this meant was that the public interest had not only become more expansive, but, to employ the terms of social theorist Jurgen Habermas, the criteria for the determination of public policy truth began to shift from those of narrow technical rationality toward those of intersubjective agreement among participants.[24] The court determined that the public interest was not a matter of an expert agency administering supposedly objective policies arrived at through value-free technical rules. Rather, the public interest was the intensely value-laden political process of groups hammering out compromises and hopefully consensual norms. Opening the regulatory process to greater participation reflected more than just the application of the political theory of pluralism. In principle, expanded participation institutionalized the possibility of arriving at a deliberative consensus through the power of the better argument.

The politics of participation lay behind the explosion of legislation that created new regulatory agencies in the period between 1965 and 1973. These agencies dealt generally in the social or quality of life area of health and safety protection, and with the externalities or the side-effects of business decisions. These agencies had jurisdiction over all industries whose operations affected health and safety. And partly because of the criticisms of the older independent regulatory commissions, the new social regulatory agencies, such as the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA), were closely tied to the president as executive agencies headed by a single administrator or as subagencies of Cabinet offices. Congress gave them general legislative mandates, but importantly also specific directives with regard to the timing and implementation of concrete legislatively set regulatory goals. The expansion of standing rights in conjunction with the establishment of the new social regulatory agencies facilitated, in Karen Orren's nice formulation, a political transformation between business and its critics analogous to that brought about between business and labor by the Wagner Act.[25] The expansion of standing was also a direct factor in the democratization and bureaucratization of older regulatory agencies. Bureaucratization for the ironic reason that once standing was expanded to include citizens groups, the procedural safeguards established by the Adminis-

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mediated consequence of the actions of social movements. Shapiro, "On Predicting the Future of Administrative Law," 20.

[24] Habermas, *Toward a Rational Society*.

[25] Orren, "Standing to Sue."

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trative Procedure Act could be used by other than industry groups to cajole the regulatory agency and impose costs by stretching out the regulatory and litigation processes. The legislative mandates of the new social agencies contained liberal standing provisions and relatively detailed language concerning procedure that required the courts to apply greater scrutiny when reviewing regulatory decisions.

The New Criteria: The Hard Look and Its Partial Demise

If the liberalization of standing and concomitant changes in the judicial conception of the public interest were at bottom rooted in the activities of new social movements and their critique of regulation, these changes necessarily required an internal judicial rethinking of the criteria of judicial review itself. There are a couple of reasons for this. First, the political activism undermined the deference to expertise. And once the expertise of regulators was doubted, the indeterminacy of the goals of the older agencies loomed large. As the court noted in *Scenic Hudson*, the Federal Power Commission's mandate required it to consider potentially incompatible—hence indeterminate—public goals when issuing a license for development of a waterway (the benefits to commerce, power, recreation).[26] Second, the specific regulatory goals of the new social agencies may have highlighted an indeterminancy of means, because of the scientific uncertainty inherent in the attempts to secure a safer workplace or cleaner water. Thus, to make sure that the new legislative-like regulatory process was fair, judicial review increasingly tended to consider whether regulatory decisions had accorded "adequate consideration" to all interests involved in a regulatory controversy.[27] In other words, in the new era of participatory regulation, agencies not only had to listen to public interest groups, but the courts would remand or vacate regulatory decisions if those decisions did not reflect that adequate scrutiny had been accorded the new intervenors' concerns. In order for a reviewing court to see whether the agency treated all interests fairly, the court required agencies to ensure access to rulemaking. This entailed giving notice of prospective rulemakings (including the facts and methodologies the agency views

[26] *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), at 614, citing Federal Power Act, 16 U.S.C. Section 10(a) Paragraph 803(a).

[27] *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965); also see Stewart, "The Reformation of American Administrative Law," 1748–1760.

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as potentially crucial to shaping the rule) and providing time for groups to testify and submit written comments. The courts required agencies to conduct oral hearings before promulgating regulations, to permit cross-examination at such hearings, and even to subsidize the participation of those groups that could not afford it. Finally, the courts required the agencies to respond in writing to the comments of groups and to compile a rulemaking record to facilitate judicial enforcement.

Practically, this could only cause further bureaucratization of agency decision making. For one thing, previously informal rulings had not normally been subject to much judicial review. But it is precisely in those informal and/or discretionary actions that much of the regulatory process takes place and where regulated parties secure benefits.[28] If interest representation was to be more than just window-dressing, informal proceedings would have to be curtailed or be made open and subject to judicial review. In a couple of cases in the early 1970s, the courts ruled that agency inaction was reviewable and that public interest groups had standing to seek such review.[29] Accordingly, the courts imposed upon agencies an affirmative duty to consider all relevant interests of those affected by agency policy. In *Scenic Hudson*, the court indicated that the agency's duty to consider all alternative policy choices might extend even to persons and groups not represented as parties. In the second *United Church of Christ* case, in the aftermath of the FCC's second renewal of station WLBT, the court angrily asserted the principle that the agency owes special duties to the beneficiaries (the audience) of a regulatory scheme.[30]

The new requirement of the agencies to compile a record—even of informal decisions—meant that the arbitrary and capricious standard took on both procedural and evidentiary dimensions. Courts would now ask: Did the regulatory agency gather the evidence in a way that truly ensured the participation of all interest groups and adequately considered their views? As such, the arbitrary and capricious standard became somewhat detached from the traditional minimum rationality test. With the interest representation model of regulation, agency decisions were considered legitimate because they were made in an open,

[28] According to Kenneth Culp Davis, probably about 90 percent of all administrative action is informal. *Administrative Law Treatise*, 2d ed. (San Diego: K. C. Davis, 1979), vol. 2, 158.

[29] *Medical Committee for Human Rights v. SEC*, 432 F.2d 659 (D.C. Cir. 1970); *Environmental Defense Fund, Inc. v. Ruckelshaus*, 439 F.2d 584 (D.C. Cir. 1971).

[30] *Office of Communication of the United Church of Christ v. FCC*, 425 F.2d 543 (D.C. Cir. 1969).

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legislative-like forum, not because the ultimate result was a decision embodying technical rationality. Several commentators and court decisions themselves lauded the transformation of administrative law as a forum for interest representation. Participation, it was claimed, not only improves the quality of agency decisions but increases the legitimacy of government decisions.[31] Some saw problems with the new model, however. Do broad participation rights actually ensure that all relevant interests will be represented before the agencies, hence offer real protection for the supposed beneficiaries of public programs? Does the formalization of agency proceedings rob the agency of the flexibility that traditionally had been seen as its strength?[32]

I believe the key problem, however, lay in the change of conception of the regulatory agency as the embodiment of expert decision making. Once the nature of public policy "truth" has been acknowledged to be not a matter of technical rationality but of the clash of many values, all of which may be reasonable, there are no hard and fast criteria upon which to base a decision. A strict interest representation model of regulation appears entirely procedural in orientation—that is, the agency's decision is legitimate if all have participated. But what of the substantive result? The mere participation of many interests in determining a norm does not, of course, ensure the rationality of that norm. Practically speaking, the new model of administrative law could not entirely abandon the expert model, if only because the agency had to reach an informed decision that embodied the new expansive version of the public interest. More than this, the law cannot seem to function without some implicit notion of objective truth, even if this notion may be philosophically untenable. Some pragmatic accommodation with an objective, substantive—even transcendental—notion of truth seems necessary. The enforcement of the interest representation model of administrative law meant that the courts themselves would engage in a substantive review, but in the guise of protecting the essentially procedural rights of newly represented parties. What began as a procedural or quasi procedural reform with regard to standing in the mid-1960s—making sure that interested parties could participate in the

[31] Ernest Gellhorn, "Public Participation in Administrative Proceedings," *Yale Law Journal* 81 (January 1972): 359–404; Louis Jaffe, "The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff," *University of Pennsylvania Law Review* 116 (April 1968): 1033–1047.

[32] See Stewart, "The Reformation of American Administrative Law," 1762–1789.

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regulatory arena—evolved into a thinly veiled substantive review with the so-called hard look standard of review in the early 1970s.

The hard look standard, associated with Judge Harold Leventhal of the DC Court of Appeals, began as a way to review the reasonableness of the exercise of agency discretion, that is, to ensure that the agencies actually considered the interests of the groups with new standing rights.[33] This appeared to be a procedural review. After all, an oft-cited 1971 Supreme Court case declared that "the court is not empowered to substitute its judgment for that of the agency."[34] As the hard look doctrine developed, the appellate courts demanded increasingly detailed explanations of an agency's rationale in decisions, its policy premises, its reasoning, its factual support.[35] "Hard look" meant that findings of fact require a basis in the record; that the result be reasonable, not in an abstract sense but as the doctrine evolved in light of the facts in the record and the legislative purpose and in light of alternative choices available. Agencies were obliged to justify departures from past practices. Hence, the traditional requirement of mere "minimum rationality" was replaced in effect by one of "reasonableness."[36] None of these terms, of course, was ever defined rigorously, probably because such definitional rigor is impossible. But the shift of power between the administrative agencies and the courts is clear. Reasonableness would be interpreted by the reviewing courts. In other words, the courts essentially assumed the role of expert and substantive arbiter of the public interest. As one conservative jurist put it, the federal courts assumed that they had a general duty to supervise agencies in much the same way that the Supreme Court supervises lower federal courts.[37] DC Circuit Judges David Bazelon and Harold Leventhal termed that supervision "collaboration" and "partnership."[38] And

[33] *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

[34] *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), at 416.

[35] Harold Leventhal, "Environmental Decisionmaking and the Role of the Courts," *University of Pennsylvania Law Review* 122 (January 1974): 509–555.

[36] This is Merrick Garland's formulation, "Deregulation and Judicial Review," 534.

[37] This is the way the matter was put by former Reagan appointee to the D.C. Court of Appeals, later solicitor-general in the Bush administration, Kenneth W. Starr. Starr, "Judicial Review in the Post-*Chevron* Era," *Yale Journal on Regulation* 3 (Spring 1986): 284.

[38] In *Environmental Defense Fund, Inc. v. Ruckelshaus*, Judge David Bazelon noted "the long and fruitful collaboration of administrative agencies and reviewing courts," 439 F.2d 584 (D.C. Cir. 1971), at 597. In *Greater Boston Television Corp. v. FCC*, Judge Harold Leventhal described the relationship between reviewing courts and agencies as "a 'partnership' in furtherance of the public interest." 444 F.2d 841 (D.C. Cir. 1970), at 851.

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because the tenor of such judicial supervision was liberal—which seems inevitable inasmuch as the appellate courts were protecting the rights of previously disenfranchised parties—conservatives complained about the "imperious judiciary."[39]

The appellate courts' activist supervision generated a rejoinder at the Supreme Court. The high court began to reject the substantive activism of the reviewing courts in a number of key decisions by the late 1970s and early 1980s. In a decision with much precedential import, *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, the Supreme Court rebuked the Court of Appeals practice of substantive review. In this case, where the appellate court had in effect taken the position of environmental groups and imposed new procedural requirements in a nuclear power plant licensing controversy, the Supreme Court unanimously held that a court could not overturn a rule on the basis of procedural devices not specifically required by the Administrative Procedure Act.

> The Court of Appeals in these cases has seriously misread or misapplied such (APA) statutory and decisional law cautioning reviewing courts against engrafting their own notions of proper procedures upon agencies entrusted with substantive function by Congress, and moreover as to the Court of Appeals' decision with respect to agency action taken after full adjudicatory hearings, it improperly intruded into the agency's decision-making process.[40]

The Irony of Hard Look: Judicial Approval of Deregulation

Vermont Yankee should be seen as a reining in of the substantive review process. The Court reinvoked the agency as expert body with the legislative mandate acting as the agency's objective or transcendental grounding. Herein lies a paradox. Even as the Supreme Court began the process of restoring the arbitrary and capricious standard of judicial review and the model of the expert regulatory agency associated with that standard, the agencies themselves had begun to adopt some of the underlying logic and conundrum of the interest representation model. In the mid to late 1970s amid double-digit inflation, talk of a decline in American productivity, and a widespread corporate cam-

[39] See, for instance, Richard J. Pierce and Sidney A. Shapiro, "Political and Judicial Review of Agency Action," *Texas Law Review* 59 (October 1981): 1175–1222.

[40] *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978), at 520.

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paign to lay these problems at regulation's door, some regulatory agencies began to view regulation as hopelessly bureaucratic, economically irrational, and inexpert. Deregulation, a policy option that garnered political support from both liberals and conservatives (albeit for different reasons), seemed to its supporters a viable way of breaking down the legacy of capture and protectionism in the New Deal agencies. Public interest groups and their liberal congressional allies attacked the traditional, price-and-entry economic regulatory agencies as prime examples of regulatory capture.[41] Free market economists and congressional conservatives attacked the same agencies as bald instances of inept regulatory protectionism usurping the far more appropriate and efficient mechanisms of the market. Indeed, economists had been critical of regulation for years, and that criticism had constituted another powerful current (sometimes allied with, sometimes in conflict with the public interest movement) in the undermining of the regulatory agency as the font of expertise.[42] Amid this new political environment, and with the support of Presidents Gerald Ford and Jimmy Carter, some of the traditional New Deal agencies began to experiment with relaxing some rules. The early moves of the Civil Aeronautics Board (CAB) in 1975–1976, for example, were to permit or even compel airlines to follow market rather than regulatory prerogatives.[43] And reflected in CAB and other agency actions was a loss of faith in bureaucratic expertise. Better to forego the sham of regulatory expertise and transfer the forum of decision making to an arena where participation seemed more open—the market. Indeed, in the subsequent judicial review of certain kinds of agency deregulation, the policy passed review in part because the agency's expert assessment established how inexpert it was and how much more appropriate were market forces.[44]

[41] In 1975, for example, Senator Edward Kennedy directed a highly publicized set of hearings intensely critical of CAB regulation. U.S. Senate, 94th Congress, 1st sess., Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Oversight of Civil Aeronautics Board Practices and Procedures* (Washington, DC: Government Printing Office, 1975).

[42] On the political dynamics of the deregulation of the New Deal regulatory agencies, see Martha Derthick and Paul J. Quirk, *The Politics of Deregulation* (Washington, DC: Brookings, 1985). On the influence of economists' scholarship on the discourse of regulatory reform, see Robert Britt Horwitz, *The Irony of Regulatory Reform: The Deregulation of American Telecommunications* (New York: Oxford University Press, 1989), 196–220. On the corporate campaign to undermine regulation, see Michael Pertschuk, *Revolt Against Regulation: The Rise and Pause of the Consumer Movement* (Berkeley: University of California Press, 1982).

[43] See the chapter on Alfred Kahn and the CAB in Thomas K. McCraw, *Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn* (Cambridge, MA: Harvard University Press, 1984).

[44] See, for example, the FCC's opinion in the radio format change inquiry, Entertainment Formats, 60 FCC 2d 858 (1976) and the commission's arguments in the court battles over these questions,

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In the judicial arena, the DC Court of Appeals, as part of the hard look doctrine's requirement that agencies consider all reasonable policy alternatives, issued some surprising decisions calling on the traditional New Deal economic agencies to consider competition instead of regulation. In a 1975 case, for example, *Continental Airlines, Inc. v. CAB*, the court found that the Federal Aviation Act required the CAB to "foster competition as a means of enhancing the development and improvement of air transportation service on routes generating sufficient traffic to support competing carriers." Other key judicial decisions followed much the same logic.[45] The DC Circuit's role in encouraging deregulation in the New Deal agencies was secondary but important. The courts did not by any stretch of the imagination cause deregulation. Most of the early action in the area of regulatory reform took place in the executive branch and in the regulatory agencies themselves, later in Congress. Between the decline of the expert regulatory agency and the particularities of the hard look standard of judicial review, regulatory agencies were afforded space for experimentation. And it seems noteworthy that these key decisions (cited in footnote 45) were written by liberals on the DC Circuit: *Moss* by Skelly Wright; *Continental Airlines* by Harold Leventhal; *PC White* a *per curiam* opinion of a panel consisting of David Bazelon, Skelly Wright, and Spottswood Robinson; *MCI* by Skelly Wright. Hence the interest representation model of regulation and early hard look doctrine of judicial review yielded a key unanticipated consequence. These conceptual changes did not simply protect the interests of those previously left out of regulatory decision making. They did do this, of course. But by forcing the agency to acknowledge the messy pluralism and indeterminacy

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WNCN Listener's Guild v. FCC, 610 F.2d 839 (D.C. Cir. 1979) and *FCC v. WNCN Listener's Guild*, 450 U.S. 582 (1981). The FCC vociferously doubted that it could come up with a measure of collective welfare superior to the marketplace. Also, see the arguments of the FCC in its decision to deregulate radio, Notice of Inquiry and Proposed Rulemaking, Deregulation of Radio, 733 FCC 2d 457 (1979), and the Court of Appeals acceptance of the FCC's logic, *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

[45] *Continental Airlines, Inc. v. CAB*, 519 F.2d 944 (D.C. Cir 1975), at 946. In addition to this case and *Moss v. CAB*, discussed in the text at footnote 19, see also *P.C. White Truck Line v. ICC*, 551 F.2d 1326 (D.C. Cir. 1977), where the court ruled that the ICC could not deny an application for truck operating rights solely on the ground that the applicant had failed to prove the inadequacy of existing service, but was required to weigh the possible benefit to the public from increased competition. Finally, see the extremely consequential long-distance telephone competition case, *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977), in which the court rejected the FCC's assumption that monopoly service in telecommunications common carriage was in the public interest.

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of the public interest and by requiring that the agency consider all reasonable policy alternatives, the interest representation model and hard look doctrine of judicial review permitted the alternative of deregulation its day in the sun as well. This is what underscores the dual legacy of a case like *Moss v. CAB*. Just as *Moss* badly raised the question of agency capture, the decision also strongly suggested that the public interest in commercial air travel may lie in competition and the restoration of market forces, as opposed to continued protectionistic regulation.[46]

So ironically, the same courts of appeals that were accused of imperiousness in their oversight of the social regulatory agencies were also in part responsible for enabling the traditional economic regulatory agencies to move away from protectionism. And that essential dynamic carried over to the judicial review of deregulation, to the dismay of many businesses and conservatives. For, notwithstanding the general character of corporate antiregulation rhetoric in the 1970s, the real targets of business were the social regulatory agencies created during the 1965–1973 period, not the New Deal economic regulatory agencies. Many businesses and most conservatives applauded the deregulation of the economic agencies; though, true to interest group politics, businesses that lost in the regulatory reforms were decidedly not pleased and often filed suit. While the deregulation of the New Deal agencies was characterized by intrabusiness conflict, businesses almost uniformly supported deregulation in the area of social regulation. However, while judicial review generally permitted the deregulation policies of the New Deal economic agencies, it undermined or at least hindered the deregulatory actions of the social agencies.

Differential Judicial Treatment of Deregulation

The next sections will trace this claim of a differential judicial treatment of deregulation through an examination of a series of regulatory cases against the backdrop of the standard of judicial review that evolved after *Vermont Yankee*. The Supreme Court's refashioning of judicial review in the 1980s revived agency expertise and stressed statutory intent. This allowed greater room for agency discretion where statutory intent was vague and less room where statutory intent was specific. To the extent that one can discern a coherent pattern of approval of

[46] *Moss v. CAB*, 430 F.2d 891 (1970), at 900.

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New Deal economic agency deregulation and reversal of social agency deregulation, I must acknowledge some important features that strain the pattern's coherence. First, notwithstanding that lower courts are bound by Supreme Court holdings, there is often a degree of leeway that can be exercised by lower court judges. This might be especially true in the judicial review of regulatory decisions during this period, because the Supreme Court modified the terms of the judicial review standard a few times after the late 1970s. Second, in the lower courts' interpretive space we find a distinct play of politics between liberal judges and Reagan appointees, particularly within the DC Circuit of the Court of Appeals. As might be expected, the Reagan appointees tended to rule in favor of social agency deregulation, and hence one can find DC Circuit opinions that go against the general pattern. The nature of a DC Circuit decision depends, of course, on the luck of the draw: who is appointed to the three-judge panel. Moreover, the Reagan appointees created a deep rift within the judicial branch, particularly in the DC Circuit, over among other things the degree of agency discretion, the question on the use of legislative history, and the scope of standing. But the Reagan appointees did not become a majority on the DC Circuit until 1986, and in the end I believe too much can be made of this political rift, in large part because the interpretive space of lower courts is in the final analysis limited. One can find many examples of politically mixed panels issuing unanimous opinions, because there is little scope for dissent given the circumstances of the case and the reigning Supreme Court holding. So, there is both a periodicity to the pattern of judicial review of deregulation and an ongoing relative incoherence in the accepted standard of review. Acknowledging all this, in the main, economic deregulation withstood review while social deregulation was hindered.

Economic Deregulation

Deregulation began first in the New Deal economic regulatory agencies, often consequent to congressional legislation passed late in the Carter administration. Legal challenges to altered regulation and new legislation resulted in appellate court decisions that began to appear in the early 1980s under the standard of judicial review articulated by the Supreme Court in *Vermont Yankee*. That case returned to the view of the expert agency to which the courts should defer so long as the agency's determination evinced a minimum of rationality. *Vermont*

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Yankee resurrected the prominence of the arbitrary and capricious standard and stressed the importance of the congressional legislative mandate to the agencies in the judicial review process. Under this standard, the courts approved most of the concrete deregulatory actions in the airline, communication, surface transportation, and securities industries.

For example, in an early 1980 challenge to CAB deregulation efforts in domestic air cargo, the Court of Appeals affirmed the CAB's authority to exempt carriers from filing tariffs and from the duty to provide service upon reasonable request. Such duties, of course, constitute the backbone of traditional price-and-entry economic regulation. The court argued that the Airline Deregulation Act of 1978 and associated amendments gave the CAB ample authority to so decide and, applying an arbitrary and capricious test, ruled that the CAB had not contravened the test.[47] The challenge to the ICC's deregulatory policies under the Staggers Rail Act of 1980 in the area of trailer-on-flatcar and container-on-flatcar services failed for similar reasons.[48] The ICC's promulgation of regulations designed to make the household goods shipment industry more competitive and accountable (under authority of the Household Goods Transportation Act of 1980) survived challenge by various moving companies.[49] Even in an important case like *Brae Corp. v. United States*, where the Court of Appeals vacated certain aspects of ICC deregulatory moves in railroads, the reasoning was that a particular exemption had not been authorized by the Staggers Rail Act and that the commission had not adequately considered "market power" as directed by the Staggers Act. The court pointedly ruled that the general exemption of boxcar freight rates from regulation was amply reasoned and consequent to the goals of legislation.[50]

Lest it be thought that judicial affirmance of agency deregulation actions rested solely on legislative direction, the Federal Communications Commission provides an important counterexample. The FCC's moves toward deregulation were not consequent to any legislation except for the relatively minor Cable Communications Policy Act of 1984. However, its many deregulatory actions also withstood judicial review. The FCC's policy of exempting small radio and television license renewal applicants from the requirement of conducting formal

[47] *National Small Shipments Traffic Conference v. CAB*, 618 F.2d 819 (D.C. Cir. 1980).
[48] *American Trucking Associations, Inc. v. ICC*, 656 F.2d 1115 (5th Cir. 1981).
[49] *North American Van Lines, Inc. v. ICC*, 666 F.2d 1087 (7th Cir. 1981).
[50] *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984).

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surveys to ascertain community needs and interests passed judicial scrutiny, as did the FCC's rule to simplify license renewal applications for all broadcast licensees.[51] The DC Circuit accepted the FCC's reasoning for its important policy reversal in the deregulation of the commercial radio industry.[52] And that court essentially paved the way for the FCC to appeal its rule obligating broadcasters to provide balanced coverage of controversial public issues—the Fairness Doctrine—which the commission did in 1987.[53] In the common carrier area, the FCC's key decisions not to regulate customer premises equipment and enhanced telecommunications services were accepted by the court as proper and reasonable. The DC Circuit found deregulation reasonable in light of evidence that market forces would be more effective than regulation in furthering the general statutory goal of making services available at reasonable rates.[54] That court found similarly in the FCC's decision to regulate in marginal fashion the emerging mobile telephone industry.[55] And in what the FCC described as the "most difficult" and probably "the most important" problem ever to come before the agency, the determination of allocation of the portion of local telephone plant cost attributable to interstate service, the court supported the commission's reasoning down the line.[56]

The cases presented above provide a clear sense of how the courts disposed of key cases where the fundamental course of deregulation was challenged. Where the agencies implemented deregulatory legislation or brought reasoned arguments to bear to justify policy reversals, deregulation passed judicial scrutiny. Accordingly, most of the major deregulatory actions of the New Deal agencies were sustained. Along with new legislation, the critical feature of the courts' affirmation of deregulation was the traditionally broad nature of the economic agencies' mandate. The court itself implied as much in the radio deregulation case, arguing that ". . . in the absence of *more specific* congressional direction, we cannot say that the Commission has overstepped either the bounds of its statutory authority or its administrative discre-

[51] *National Black Media Coalition v. FCC*, 706 F.2d 1224 (D.C. Cir. 1983); *National Black Media Coalition v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

[52] *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

[53] *Telecommunication Research and Action Center v. FCC*, 801 F.2d 501 (D.C. Cir. 1986).

[54] *Computer and Communications Industry Ass'n. v. FCC*, 693 F.2d 198 (D.C. Cir. 1982).

[55] *Telocator Network of America v. FCC*, 691 F.2d 525 (D.C. Cir. 1982).

[56] *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984).

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tion in undertaking most of the deregulatory actions under review."[57] Deregulation would be affirmed if the legislative mandate vested the agency with wide discretion to choose among policy options.[58]

Social Deregulation

The Reagan administration came into office in 1981 vowing to "get the government off the backs of the people." What that rhetoric meant, of course, was a clear intention to roll back the social regulatory agencies.[59] Congress had passed legislation to deregulate airlines, trucking, railroads, and to a lesser degree, banking, communications, and natural gas. But there was no chance the Reagan administration could secure legislation on social regulation. The administration chose to pursue deregulation by two general means. First, executive orders issued in 1981 required that executive agencies conduct strict cost-benefit analyses of new regulations and gave the Office of Management and Budget (OMB) authority to review those analyses. Second, the administration appointed to agency directorships persons highly unsympathetic to regulation, who in many instances would act to reverse policies or simply not enforce regulations. Agency inaction, nonenforcement, and delay, as well as direct policy reversals, not surprisingly engendered a myriad of lawsuits. In addition to OMB oversight and hostile agency

[57] *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983), at 1443. (Emphasis added.)

[58] To be sure, reviewing courts did rule against some of the deregulatory actions of the economic agencies. See *Farmers Union Central Exchange, Inc. v. Federal Energy Regulatory Commission*, 734 F.2d 1486 (D.C. Cir. 1954); *Arizona Public Service Co. v. U.S.*, 742 F.2d 644 (D.C Cir. 1984); *Global Van Lines v. ICC*, 714 F.2d 1290 (5th Cir. 1983); *International Brotherhood of Teamsters v. U.S.*, 735 F.2d 1525 (D.C. Cir. 1984). But these cases read like standard arbitrary and capricious reversals, wherein the agency failed to consider alternative ratemaking methodologies or ruled where its legislation did not empower it to do so. And politics do not appear as much of a variable in these standard sort of arbitrary and capacious remands inasmuch as these reversals often were reached unanimously by politically mixed panels. A liberal panel of J. Skelly Wright, Patricia Wald, and Ruth Ginsburg decided *Arizona Public Service*; a politically mixed panel of Wright, Scalia, and MacKinnon decided *International Brotherhood of Teamsters*; just as a politically mixed panel of Wald, Edwards, and Starr decided *Farmers Union Central Exchange*.

[59] See, for example, the right-wing Heritage Foundation's massive tome, Charles L. Heatherly, ed., *Mandate For Leadership: Policy Management in a Conservative Administration* (Washington, DC: Heritage Foundation, 1981). Though this report and its follow-up, Stuart M. Butler, Michael Sanera, W. Bruce Weinrod, eds., *Mandate For Leadership II: Continuing the Conservative Revolution* (Washington, DC: Heritage Foundation, 1984), made recommendations on all aspects of the executive, the social regulatory agencies came in for special attention. By all accounts the Reagan administration took the Heritage reports extremely seriously, regarding the first volume a virtual blueprint for action.

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directors, Reagan's massive increase of the federal deficit may have been designed as an invisible regulatory tool. Even though deregulatory legislation could not be secured, huge federal deficits would presumably tie the hands of future presidents and Congresses with regard to new, potentially costly regulatory programs and their enforcement.[60]

The major Supreme Court decisions on administrative law in the 1980s supported the Reagan agenda in principle but tended to undermine it in practice. The Court ruled increasingly in favor of expanded presidential authority in the regulatory agencies housed in the executive branch and made it more difficult for courts to reverse agency decisions. This clearly comported with administration designs. At the same time, the Court ruled that agencies must carry out their specific statutory mandates. And because the social agencies typically possessed specific mandates, deregulation-inspired policy reversals often resulted in judicial reversals. Three cases set up this dynamic: *Motor Vehicles Manufacturers Association v. State Farm Mutual Auto Insurance, Chevron v. Natural Resources Defense Council*, and *Heckler v. Chaney*.[61] *State Farm* dealt with a deregulatory policy reversal. Reagan's National Highway Traffic Safety Administration (NHTSA) had issued an Auto Relief Package designed to roll back policies considered burdensome to automobile manufacturers. The Court rejected NHTSA's recision of an existing standard regarding automobile passive restraints (automatic seat belts and auto airbags) as arbitrary and capricious, because the agency did not clearly justify its shift in regulatory policy. Agencies, the Court argued, must justify shifts in regulatory policy by "offer[ing] a rational connection between the facts found and the choice made."[62] This decision constituted an important setback for the Reagan administration's deregulation efforts. And it elucidated an important addendum to the *Vermont Yankee* standard of judicial review. The Court strongly endorsed the requirement, born in the participatory interest representation model, that the agency consider all alternatives and present a reasoned explanation of its final judgment. The revocation,

[60] The massive federal deficits would affect not just regulation, of course, but the entire welfare state. See, among others, Theodore J. Lowi, "Two Roads to Serfdom: Liberalism, Conservatism and Administrative Power," *The American University Law Review* 36 (Winter 1987): 295–322.

[61] *Motor Vehicles Manufacturers Association v. State Farm Mutual Auto Insurance*, 463 U.S. 29 (1983); *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984); *Heckler v. Chaney*, 470 U.S. 821 (1985).

[62] *Motor Vehicles Manufacturers Association v. State Farm Mutual Auto Insurance*, 463 U.S. 29 (1983), at 52.

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not just the establishment, of a regulatory standard would be subject to the arbitrary and capricious standard of review.

One inference drawn from *State Farm* was that the Court would not sanction a regulatory policy reversal in the face of a congressional mandate. That particular inference was amplified by the Court itself a year later in *Chevron v. National Resources Defense Council*.[63] In this case about interpreting a term in the Clear Air Act that Congress had not defined (whether a stationary source of emission applied to an entire plant rather than a single smokestack), the Court developed a two-step process for analyzing the validity of an agency's interpretation of a regulatory statute. If Congress's intent is clear, the agency must implement it. But if the statute is silent or ambiguous, a court has a duty to respect the expert policy choices of the agency. The *Chevron* case reflected in part a discussion about the power of the president to give effect to his electoral mandate via the regulatory agencies—a point raised in Justice William Rehnquist's separate opinion in the *State Farm* case.[64]

The Court restored more than the patina of agency expertise with the *Chevron* decision, which quickly emerged as a leading opinion. So long as an agency has articulated a reasonable construction of an ambiguous aspect of its mandate, the courts may not say that some other construction would be more reasonable. What is new here is the Court's deference to an agency's legal interpretation of its enabling statute.[65] This presumably would permit the regulatory bureaucracy to be more attuned to the policies of the president, for the bottom line of *Chevron* is that where the statutory text is vague and legislative history ambiguous, the agency's interpretation prevails. This gives considerable leeway to the agency, because there is usually some ambiguity to statutes and because practical issues come up that the original statute could not possibly have anticipated. By 1985 the Supreme Court scaled back the review process further. In *Heckler v. Chaney* (a somewhat bizarre case about whether the Food and Drug Administration could refrain from enforcing regulations against unapproved use of drugs to be used for capital punishment by lethal injection) the Supreme Court ruled that the Administrative Procedure Act grants a presumption

[63] *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

[64] *Motor Vehicles Manufacturers Association v. State Farm Mutual Auto Insurance*, 463 U.S. 29 (1983), at 57–59 (Rehnquist, J., concurring in part, dissenting in part).

[65] Abner J. Mikva, "How Should the Courts Treat Administrative Agencies?" *The American University Law Review* 36 (Fall 1986): 1–10.

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of unreviewability to an agency's decision not to initiate enforcement action. Because an agency's decision "not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise . . . [including the allocation of scarce prosecutorial resources] the agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities."[66] It is up to Congress to spell out whether courts may review an agency's inaction. Again, statutory language is central, but the presumption of unreviewability puts much agency inaction off limits.

Both *Chevron* and *Heckler v. Chaney* effectively expanded presidential authority and reinvigorated the doctrine of judicial deference to the expertise of the regulatory agency.[67] Notwithstanding this bow to presidential power and agency expertise, the success of the Reagan administration in rolling back the social agencies was decidedly mixed. This is largely because of the specificity of legislation to the social agencies and the double-edged nature of judicial review under the *Chevron* standard. When agency actions or inactions were thought to contravene specific legislative intent, there is a clear pattern of judicial reversal or, at the very least, modification of deregulation. The statutory specificity of the social agencies resulted from two major factors. First, when Congress passed new regulatory legislation in the late 1960s and early 1970s, the supposedly "captured" New Deal agencies, characterized by their broad and general mandates, loomed as the example to be avoided. Second, the aims of protecting workers' safety and safeguarding clean air necessitated a technical density to the new agencies' goals and actions not generally required of the older economic agencies. The specificity of the legislative mandates is the main reason for the failure of deregulation by inaction and policy reversal.

For example, in an effort to move toward a general model of industry self-regulation and voluntary compliance, early on in the first Reagan term the Occupational Safety and Health Administration refused to

[66] *Heckler v. Chaney*, 470 U.S. 821 (1985), at 826–827.

[67] The Court relied heavily on the *Chevron* precedent, for example, in reversing a Court of Appeals rejection of EPA "modifications" of variances from toxic pollutant and effluent limitations in *Chemical Manufacturers Association v. Natural Resources Defense Council*, 470 U.S. 116 (1985). At issue was the word "modified" as found in a particular provision of the Clear Air Act, and the agency's interpretation was declared controlling. See also *Young v. Community Nutrition Institute*, 476 U.S. 974 (1986), in which the Court reversed the Court of Appeals (a politically mixed panel of Starr, Edwards, and Mikva) on an FDA decision not to establish a tolerance level for aflatoxin in food, became the FDA's interpretation was sufficiently rational given the ambiguity of the Federal Food, Drug, and Cosmetic Act.

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issue an emergency standard aimed at reducing worker exposure to the toxic gas, ethylene oxide. OSHA director, Thorne Auchter, decided to rely on the voluntary efforts of employers to lower exposure limits. The DC Court of Appeals held that OSHA had abused its discretion in not issuing the standard because the OSH Act directed the agency to adopt emergency standards if failure to take action would subject workers to "grave danger" from exposure. Because such a finding existed in the record, the court ordered the agency to expedite issuing a standard. The court effectively ruled that an agency could not refuse to take action that was required by its legislative mandate.[68] In an important policy reversal case, *Public Citizen v. Steed*, the DC Circuit vacated the National Highway Traffic Safety Administration's indefinite suspension of the automobile tire grading program. Though the program had been mandated by the Motor Vehicle Safety Act of 1966, the Reagan NHTSA suspended it on the ground that because of variability in testing procedures, potentially misleading information was being disseminated. In stinging language, the court declared the agency's action a "sorry performance," an attempt to sabotage the grading program by "compulsive perfectionism." The agency had failed to provide adequate justification for the reversal of policy; hence the court declared the action arbitrary and capricious.[69] Likewise in *International Ladies' Garment Union v. Donovan*, the DC Circuit vacated the secretary of labor's decision to rescind long-time restrictions on the manufacture of knitted outerwear in the home because he had failed to justify the policy reversal.[70] And in a 1987 case, *Union of Concerned Scientists v. Nuclear Regulatory Commission*, the DC Circuit essentially ruled that an agency could not enact a new regulation (whose effect would be deregulatory) if it contravened the agency's statutory mandate. The court overturned a Nuclear Regulatory Commission (NRC) regulation that required an analysis of costs as opposed to benefits in determining whether and how existing nuclear power plants should be refitted to meet the standard of adequate protection for health and safety. The court said it was illegal to apply cost factors in safety matters, according to the mandate found in the agency's enabling statute.[71]

[68] *Public Citizen Health Research Group v. Auchter*, 702 F.2d 1150 (D.C. Cir. 1983).
[69] *Public Citizen v. Steed*, 733 F.2d 93 (D.C. Cir. 1984).
[70] *International Ladies' Garment Union v. Donovan*, 722 F.2d 795 (1983).
[71] *Union of Concerned Scientists v. NRC*, 824 F.2d 102 (D.C. Cir. 1987).

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The social agencies also might be reversed if inaction violated provisions of the Administrative Procedure Act.[72] The judicial rejection of deregulation by inaction underscores the historical irony of procedural reforms. If the Administrative Procedure Act originally wound conservatizing webs around New Deal agencies by virtue of myriad procedures, these very procedures—notably the notice and comment procedures—also inhibited the Reagan social agencies' rollback of rules.

To be sure, there are exceptions to this pattern. More important, there is a periodicity to the pattern due to the play of politics within the courts—particularly the DC Circuit. By 1986, after *Heckler v. Chaney* and after the Reagan appointees achieved a majority on the DC Circuit, one discerns a shift in the disposition of cases challenging social regulatory inactions and policy reversals. For example, in *United Steelworkers of America v. Rubber Manufacturers Association*, a panel of Antonin Scalia, Kenneth Starr, and Carl McGowan denied mandamus to compel OSHA to undertake more expedited rulemaking on benzene standards, even if past delay in issuing such a standard was unreasonable.[73] And in *Consumers Union of U.S., Inc. v. Federal Trade Commission*, a panel consisting of Scalia, Starr, and Patricia Wald (writing separately) denied Consumers Union's petition for review of an FTC rule governing the sale of used cars. The court held that the FTC's decision to omit from final rule a "known defects" disclosure provision was supported by substantial evidence in the rulemaking and was neither arbitrary nor capricious.[74]

Indeed, by 1986 the rift between the liberals on the DC Circuit and the Reagan appointees was palpable. In many decisions, the political orientation of the majority of the panel determines the outcome of the case, and the dissent of the odd judge out is often biting.[75] Under

[72] See for instance, *Natural Resources Defense Council, Inc. v. EPA*, 683 F.2d 752 (3d Cir. 1982) in which the court ruled that President Reagan's executive order that prompted the postponement of amendments to certain regulations dealing with the discharge of toxic pollutants into publicly owned treatment works did not constitute good cause to dispense with Administrative Procedure Act requirements. Or *Environmental Defense Fund, Inc. v. Gorsuch*, 713 F.2d 802 (D.C. Cir. 1983), in which the DC Circuit vacated a decision of the EPA to defer the processing of operating permits for existing hazardous waste incinerators and storage impoundments as a violation of the APA.

[73] *United Steelworkers of America v. Rubber Manufacturers Association*, 783 F.2d 1117 (D.C. Cir. 1986).

[74] *Consumers Union of U.S., Inc. v. Federal Trade Commission*, 801 F.2d 417 (D.C. Cir. 1986).

[75] See, for example, *Center For Auto Safety v. Peck*, 751 F.2d 1336 (D.C. Cir. 1985), where in a panel of Scalia, Edward Tamm, and Wright, the majority approved of the NHTSA's policy to rollback auto bumper-crash standards. Skelly Wright posted a strong dissent, dismissing the majority's interpretation both of the facts and the standard of review. Or, in a contrary case, *Center For Auto Safety v. Dole*, 828 F.2d 799 (D.C. Cir. 1987), the majority of a panel consisting of Wald,

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the leadership of Robert H. Bork, the conservatives on the DC Circuit tried to scale back standing, making it much more difficult for public interest groups to bring lawsuits against regulatory agencies. The Reagan appointees also tried to restrict judicial interpretation of statutory mandates by disallowing the consideration of legislative history in probing the intent of Congress. Former judge, now Justice Antonin Scalia, was the prime proponent of this view on the DC Circuit. In what must be interpreted as an attempt to slow down citizen group challenges, the conservatives tried to scale back the court-ordered legal fees awarded to public interest lawyers.[76] The battle between liberal and conservative judges in the DC Court of Appeals became public in August 1987. In what was generally considered an extraordinary action, the Reagan-appointed conservatives on the court, led by Judge Bork, voted to review a series of cases *en banc* that had been decided by three-judge panels with liberal majorities. Liberals on the court responded with an unusual and bitter public statement to which the conservatives responded.[77]

Between strong political differences between judges and changing standards coming from the Supreme Court, one finds a veritable muddle of decisions on social agency deregulation by 1986, often (but by no means always) depending on the political composition of the three-judge panel. Still, the *Chevron* and *Heckler v. Chaney* opinions cut both ways for social agency deregulation, largely because of the ineluctable importance of statutory language. That language even constrained the Reagan appointees to the DC Circuit. The importance accorded the enabling legislation ties even the courts' hands when an agency seeks to rule against its mandate. In a telling 1987 case regarding

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Abner Mikva, and Bork granted a citizens group's petition to reopen an enforcement investigation for safety defects in 1966–1979 Ford automobiles. Bork filed a vigorous dissent.

[76] See Chief Judge Patricia M. Wald's comments, "The D.C. Circuit Here and Now," *The George Washington Law Review* 55 (May/August 1987): 718–728. For the results of strict statutory interpretation, see Judge Bork's linguistic interpretation of the Fairness Doctrine amendment to the Communications Act, and nonconsideration of its legislative history in *Telecommunications Research and Action Center v. FCC*, 801 F.2d 501 (D.C. Cir. 1986). For the logic on scaling back standing see Bork's dissent in *Center for Auto Safety v. Dole*, 828 F.2d 799 (D.C. Cir. 1987), and Scalia's dissent in the earlier *Center for Auto Safety v. Thomas*, 793 F.2d 1322 (D.C. Cir. 1986). On the fight over legal fee awards, see Stephen Williams' dissent in *Union of Concerned Scientists v. Nuclear Regulatory Commission*, 840 F.2d 957 (D.C. Cir. 1988).

[77] Nancy Lewis, "Liberal-Conservative Squabble Rocks U.S. Appeals Court Here," *Washington Post*, 1 August 1987; also Stuart Taylor Jr., "Feuding Erupts Again in a Key Appeals Court," *New York Times*, 15 August 1987; Terry Carter, "After Bork, a Rift Widens," *The National Law Journal*, 28 (March 1988): 1, 43–44.

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the cancer risk of color additives in foods, drugs, and cosmetics, for example, a self-confessed reluctant DC Circuit found itself forced to reject a Food and Drug Administration attempt to weaken the so-called "Delaney clause." The Delaney Amendment to the U.S. Food, Drug, and Cosmetic Act banned the use of carcinogenic food additives. The FDA sought to advance the argument that a minor or de minimus risk was permitted with regard to color additives. Writing for a politically mixed panel (Ruth Ginsburg, Stephen Williams, and Harold Greene sitting in from Federal District Court), Reagan-appointee Williams argued ruefully that the legislative clause lacked such an exception and ruled against the agency.[78] In *Natural Resources Defense Council, Inc. v. Herrington*, a mixed panel of Wald, Bork and McGowan unanimously vacated the weakened rules the Reagan Department of Energy had promulgated on mandatory energy-efficiency standards in eight types of household appliances. The court held that the agency adopted tests for significant energy savings that violated congressional intent. The agency failed to determine maximum technologically feasible improvements in efficiency for the covered products and limited the technologies it was willing to consider for standards without sufficient explanation.[79]

Finally, certain cases make the import of *Heckler v. Chaney* less clear. For example, in a 1987 inaction case, *Farmworker Justice Fund v. Brock*, an angry Patricia Wald (writing for the majority) ordered the secretary of labor to issue field sanitation standards providing access to drinking water and toilets for agricultural workers. OSHA had delayed regulation ostensibly because of the Reagan administration's preference for state regulation of occupational health over federal regulation. The court ruled that OSHA's long failure to issue such standards, the need for which had been shown under the OSH Act, was entirely beyond the scope of the secretary's discretion and was unreasonable. Judge Wald's opinion made clear that the liberals would not allow the presumption of unreviewability of agency inaction under *Heckler v. Chaney* to undermine the courts' need to see that agencies fulfill their statutory mandates as stipulated under *Chevron*.[80]

The Supreme Court made clear in the *State Farm* automobile airbags case that an agency's failure to implement or enforce a clearly deline-

[78] *Public Citizen et al. v. Dr. Frank Young*, 831 F.2d 1108 (D.C. Cir. 1987).
[79] *Natural Resources Defense Council, Inc. v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985).
[80] *Farmworker Justice Fund v. Brock*, 811 F.2d 613 (D.C. Cir. 1987).

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ated statutory scheme is arbitrary and capricious. The Reagan administration's inability to achieve deregulatory legislation in the area of social regulation meant that the new standard of judicial review would hinder its efforts at deregulation by inaction and policy reversal. Still, deregulation did occur in the environmental, consumer, and health and safety areas. OMB cost-benefit reviews impeded the issuance of new regulations. The budget for inspections, crucial to any enforcement, was slashed considerably during the Reagan years. Many agency actions of delay and nonenforcement never reach the judicial arena. And even judicial remand cannot easily compel recalcitrant agencies to enforce rules, much less issue new ones.[81] Given the deference of the *Chevron* standard and the presumption of unreviewability from *Heckler v. Chaney*, the courts have approved where an agency policy reversal does not contravene a specifically mandated legislative goal and is accompanied by an accurate and rational explanation, as in the NHTSA's rollback of bumper-crash standards.[82] Notwithstanding, between the specific nature of social agencies' statutes and the hard look of the reviewing courts, far less deregulation occurred than one might expect.

Conclusion

The *Chevron* and *Heckler v. Chaney* decisions would seem to accommodate the conservative Reagan agenda. The Supreme Court's restoration of the expertise model of regulation coincided with conservative calls to halt the imperious judiciary and to further centralize the power of the president. Indeed, the decisions seem as much about presidential power over the policy-making apparatus as they are about the terms of judicial review. Just as these decisions restrict the scope of judicial review of administrative decisions, they make clear that broad, nonspecific congressional delegations cede policy-making power to the executive via the restored discretionary expertise of the agencies.

It would be a mistake, however, to postulate either an absolute coincidence of legal doctrine and the contours of American politics or a hard and fast separation between them. After all, the changes in administrative law over the past twenty-five years point to a delicate

[81] See, for instance, Joan Claybrook et al., *Retreat from Safety: Reagan's Attack on America's Health* (New York: Pantheon, 1984); Martin Tolchin and Susan Tolchin, *Dismantling America: The Rush to Deregulate* (Boston: Houghton-Mifflin, 1983).

[82] *Center for Auto Safety v. Peck*, 751 F.2d 1336 (D.C. Cir. 1985).

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and complex relationship between politics and the law. The changes in standing inaugurated by *Scenic Hudson* and *United Church of Christ* were responses to the political upheaval in the mid-1960s over the terms of participation in a democracy. The challenge by those left out of politics in general and the regulatory arena in particular served to cast doubt upon the traditional New Deal notion of the regulatory agency as expert arbiter of the public interest. In other words, judges are part of the universe of contemporary political discourse and are not so insularly confined to the internal analysis of law. The expansion of standing in the 1960s reflects that. Once standing was expanded, however, new legal doctrine was necessary to protect the new participants in the regulatory arena and to implement the new version of the public interest.

New legal doctrine sets in motion its own dynamic and largely internal contradictions. The objective model of truth upon which expertise is based was replaced with a participatory, intersubjective consensus model, supervised by a scrutinizing judicial review process. This model could not stand on its own, however, because fair participation alone cannot assure a rational result or a deliberative consensus. Appellate courts moved into the breach with their own expertise. The courts of appeals, particularly the DC Circuit, took a pragmatic, flexible, some say activist approach, taking a hard look at agency action or inaction. That activism was undercut by the Supreme Court in the 1980s, and the model of the expert agency has returned. Since *Vermont Yankee*, the 1978 case that resurrected the arbitrary and capricious standard, the high court can be characterized as having written formalistic decisions about administrative law, trying to stipulate the degree of deference courts must accord agencies and attempting to fix the scope of review. Beyond the procedural enforcement of participation in decision making and the requirements that the agency consider reasonable alternatives and provide reasoned explanation for its decision, the Court has determined that the specific congressional mandate to the agencies constitutes the boundary of the agency's discretion. It is noteworthy that the most precedential cases—*Vermont Yankee*, *State Farm*, *Chevron*, *Heckler v. Chaney*—were all strong majorities, if not unanimous opinions, including the most liberal Justices William Brennan and Thurgood Marshall.[83] Perhaps the difference between

[83] This is a little misleading, inasmuch as in *Heckler v. Chaney*, Brennan's separate concurrence circumscribes the majority's logic, and Marshall's separate concurrence entirely disagrees with the majority's logic.

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the Supreme Court and the courts of appeals is institutional position, not politics per se. The courts of appeals review a few thousand regulatory cases a year. They must get their hands dirty, so to speak, to ensure that the agencies have fulfilled their mandates and have not abused their discretion. The Supreme Court, on the other hand, reviews perhaps ten regulatory cases a year and hence is more concerned with the formalistic procedures of judicial review. Indeed, the recent formalism of the high court's administrative law rulings may be part of a broader turn of the Court toward formalism in all separation of powers matters, of which regulatory issues are just one subset. The Supreme Court has made clear in recent decisions that it will interpret separation of powers literally, and that Congress can control agency policy making only through direct legislative action.[84]

One final observation. The conservative campaign against the imperious judiciary generally highlights the pendulum theory of law. During the New Deal, liberals were pro-agency and anti-court. Conservatives and business supported the Administrative Procedure Act so as to limit administrative agency authority through strong judicial review. With the expansion of standing in the mid 1960s, the decline of the model of the expert agency and the corresponding change in the standard of judicial review toward the hard look doctrine, the APA worked on behalf of new intervening parties. Liberals and conservatives switched strategic positions. The strong judicial review championed by liberals and public interest groups led, among other things, to a conservative backlash against a so-called imperious judiciary. Particularly with the coming of the Reagan presidency and its deregulatory agenda in the health and safety areas, conservatives argued for more presidential

[84] In *INS v. Chadha*, 462 U.S. 919 (1983), the Court held that the "legislative veto" was unconstitutional. Congress must use the legislative process, and not a veto, to alter or revoke its delegation of authority. The one-house veto was unconstitutional, because as legislative action it required passage by two houses and the president. Practically speaking, this means that Congress may no longer vote down an agency rule. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court held that congressional appointments of Federal Election Commission members was unconstitutional. This is because the executive holds the power of appointment. And in *Bowsher v. Synar*, 479 U.S. 714 (1986), the case that tested the constitutionality of the Gramm-Rudman-Hollings Act, the Court held that the Constitution does not permit Congress to execute the laws. Specifically, *Bowsher* overturned the provision that vested executive powers in an officer (the comptroller general) removable by Congress. Most interpret these decisions as giving more power to the president. Some commentators, including Justice Byron White, have called this formalism in separation of powers issues "constitutional fundamentalism." It is the subject of Justice White's vigorous dissent in *Bowsher v. Synar*. The one case that counters this trend is the important decision that upheld the constitutionality of the provisions of the Ethics in Government Act of 1978, which permit the appointment of an independent counsel by the Justice Department, *Morrison v. Olson*, 108 S. Ct. 2597 (1988).

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power, which implicitly meant the restoration of the doctrine of the expert agency. *Vermont Yankee*, *State Farm*, and *Chevron* seem to strike a balance between the expertise model and the hard look but also seem to implement the conservative agenda of interpreting statutory mandates narrowly and in increasing the power of the president. And *Chevron*, in permitting an agency to interpret its enabling statute, seems entirely inconsistent with the original conservative political goals of the APA.

At the same time, the ascendance of the principle of deference to the will of legislatures, long championed by conservatives to contain liberal judicial activism, has functioned in practice paradoxically to undermine any wholesale rollback of liberal social regulation. In this regard, the importance of the specificity of regulatory mandates has meant that the pendulum swings of administrative law are not just part of a long cycle but also part of daily routine at the appellate court level. This, I think, is the meaning of Judge Wald's confrontational dance around the *Heckler v. Chaney* doctrine of unreviewability of agency nonenforcement in *Farmworker Justice Fund, Inc. v. Brock*. She asserted that *Heckler v. Chaney* does not bar judicial review of agency decision making to determine whether the agency, in not acting, relied on statutorily impermissible or irrelevant factors. Agency inaction may be lawful because an agency must allocate prosecutorial resources, but its inaction must be reasonable on the merits.[85]

Postscript 1994

Judge Wald's view has not held. As the composition of the Supreme Court has become more conservative, the Court has strengthened the vision first articulated in *Chevron*. Embodying a formalistic interpretation of the separation of powers, that vision allows regulatory agencies to interpret their statutory mandates and requires courts to adjure the oversight of regulatory agencies.[86] It has been said that to the extent the Supreme Court's formalism on these issues favors any political agenda, it continues the centralization of power in the presidency. The most recent examples of the Court's formalism in administrative law

[85] *Farmworker Justice Fund, Inc. v. Brock*, 811 F.2d 613 (D.C. Cir. 1987), at 619–623.

[86] *Rust v. Sullivan* is perhaps the most notorious example. In *Rust*, the Court majority upheld regulations issued by the Department of Health and Human Services prohibiting federally funded clinics from providing counseling, referrals, or information regarding abortion as a method of family planning. The majority invoked *Chevron*, because Congress had been silent or ambiguous with respect to the specific issue. 111 S. Ct. 1759 (1991).

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cases indicate that other politics are at stake as well, namely the degree of access to the courts. *Lujan v. National Wildlife Federation*, *Air Courier Conference of America v. Postal Workers Union, AFL-CIO*, and *Lujan v. Defenders of Wildlife* tighten access to the judiciary, making it harder for parties other than those directly regulated by an agency to challenge the agency's action.[87] Under the leadership of Justice Scalia, the conservative Court majority is reinstating the old, private-law model of standing. Begun in an effort to contain the perceived excesses of the participatory, interest-representation model of administrative law, a now conservative Court is moving not only to reverse the participatory politics of interest representation, but toward a restrictive private law vision that predates even the New Deal model.[88]

[87] *Lujan v. National Wildlife Federation* concerned a challenge by an environmental group over changes in Bureau of Land Management classifications of public land. The case establishes that a general regulatory program is not an "action" subject to appeal, and court intervention might not be "ripe" until actual earthmoving begins on the public lands. 110 S. Ct. 3177 (1990). In *Air Courier Conference of America v. Postal Workers Union, AFL-CIO*, the Court majority denied standing to postal unions in a Postal Service exception to the Private Express Statutes because the unions' interests were judged not to fall within the "zone of interest" of the relevant statute. 111 S. Ct. 913 (1991). In *Lujan v. Defenders of Wildlife*, the Court majority denied standing to an environmental group challenging a revised rule promulgated by the secretary of interior on the basis that plaintiffs did not have a "sufficiently imminent individualized harm." 112 S. Ct. 2130 (1992).

[88] See Keith Werhan, "The Neoclassical Revival in Administrative Law," *Administrative Law Review* 44 (Summer 1992): 567–627; Marla E. Mansfield, "The 'New' Old Law of Judicial Access: Toward a Mirror-Image Nondelegation Theory," *Administrative Law Review* 45 (Winter 1993): 65–105.

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Book Reviews

The Politics Presidents Make: Leadership from John Adams to George Bush *by Stephen Skowronek. Cambridge, MA, The Belknap Press of Harvard University Press, 1993. 526 pp. $29.95.*

Stephen Skowronek's purpose in this book is to analyze the transformative capacities of the presidency systematically by locating incumbent presidents in political time rather than by grouping them in chronological epochs of political history. He is interested in what he calls the "blunt disruptive force" of the presidency, an office that "regularly reaches beyond itself to assert control over others" and that "recasts political possibilities," (p. 4), "disrupts power arrangements" (p. 15), and "has functioned best when it has been directed toward dislodging established elites, destroying the institutional arrangements that support them, and clearing the way for something entirely new" (p. 27).

Skowronek defines presidential politics in terms of these disruptive activities. Presidents engaged in wholesale repudiation of existing politics, when the regime is vulnerable to change, are engaged in what he calls the "politics of reconstruction" and include such figures as Thomas Jefferson, Andrew Jackson, Abraham Lincoln, and Franklin Roosevelt (p. 36). Those who come to power opposed to existing arrangements but facing an entrenched regime are engaged in the "politics of preemption" and include John Tyler, Andrew Johnson, Woodrow Wilson, and Richard Nixon: these are presidents who engage in prerogative politics and often their administrations suffer dramatic defeats (p. 44). Presidents who maintain an existing structure of authority (who follow regime-builders like Jefferson and Jackson) are involved in the "politics of articulation" when they find it easy to continue the policies of their predecessors (because the regime they are buttressing is resilient to change), or the "politics of disjunction" if they continue with an orthodoxy that cannot meet the problems they face and try to buttress a regime that has become politically insupportable (pp. 39–41).

Skowronek uses this typology to cluster presidents in political rather than chronological time. He finds commonalities in unlikely places (James Polk and Lyndon Johnson, Andrew Johnson and Woodrow Wilson), and brings illumi-

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nating insights to each president that he discusses. He points out, for example, that regimes face ever increasing challenges from the opposition: the Jacksonian regime is battered by Tyler, Zachary Taylor, and then Lincoln; the Republican regime faces Grover Cleveland, Woodrow Wilson, and Theodore Roosevelt; the New Deal regime is challenged by Dwight Eisenhower, Richard Nixon, and then Ronald Reagan—in each case the challenges becoming more insistent and more radical until the regime is overthrown. Other illuminating insights can be found on almost any page, such as his observation that Jimmy Carter, Ronald Reagan, and George Bush follow a cycle similar to John Quincy Adams, Andrew Jackson, and Martin Van Buren. His concluding discussion of the Reagan and Bush presidencies shows the value of systematic theorizing and how it can bring recent events into a larger context.

Skowronek's deconstruction of American political history and his reconstruction of the politics of the presidency directly threaten the validity of the theories of the modern and postmodern presidencies and show the limitations of relying mainly on theories of leadership or professionalism in explaining the preconditions for effective use of presidential power. Theorists of presidential authority and legitimacy, who are used to clustering presidents of different eras together to find common patterns and who understand that sometimes presidential power runs in cycles or has periods of violent fluctuation, will be quite at home with Skowronek's methods. (As I was reading his book, it occurred to me that using similar methods he might in a subsequent volume cluster presidents who have claimed constitutional powers: the title *The Powers Presidents Take* kept running through my mind.)

Skowronek has made a major theoretical contribution to the study of the presidency. Still, I have some reservations about his execution. It is not clear to me what Skowronek means by a "regime." I am not sure whether he means a party coalition and its attendant interest groups (in which case regimes may no longer exist in quite the same way as chronological time progresses) or an external power structure that parties reflect (in which case we need some discussion of the preferred status of the business community after the Civil War) or an equilibrium of group forces (following the pluralists) or a dominant political orthodoxy (ideology and set of programmatic commitments). A clear and consistent definition seems to me to be essential, because Skowronek argues that Eisenhower and Nixon were regime outsiders, while Truman and Kennedy and Johnson were insiders maintaining the regime. I don't know how much sense it makes to consider Eisenhower an outsider given his resume, unless we are using regime simply as a shorthand way of saying dominant party coalition; nor do I think Kennedy was an insider in his party, in the Senate, or in extragovernmental structures of power. As for Johnson, one of his biggest problems was his feeling of inferiority as a Texan from the southern wing of the party. Perhaps we also need a notion of an establishment that may itself stand at times outside of the dominant political regime and may be in conflict with it—an establishment that

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had welcomed Eisenhower and had found great uses for Johnson, but that had never welcomed or trusted Kennedy. In short, I am not sure that Skowronek's concept bears the weight of all the different constellations of forces in the American political economy or that it enables us to make complete assessments of what presidents are trying to accomplish when they confront these forces.

I found much to argue about when Skowronek got down to cases. In discussing Theodore Roosevelt, for example, Skowronek claims that he "worked his way up through the ranks of an established regime," (p. 42) which I don't think is an accurate way to characterize his ascent to power nor his attitude toward people like J. P. Morgan. He includes Lyndon Johnson in a group of presidents of which he says "no extraordinary crisis distracted them from the business of completing their agenda" and that "nothing of significance was to be repudiated" (p. 42). Nothing in Johnson's case except the southern tradition of white supremacy and southern Democratic reluctance to support domestic social welfare initiatives that might benefit minorities! He says that "it is no coincidence that Polk, Roosevelt and Johnson all decided not to stand for reelection" (p. 43). This is not quite how I would put what happened to Johnson in New Hampshire; he stood all right; and after a narrow and unconvincing victory over Eugene McCarthy, "landslide Lyndon" bugged out. He suggests that presidents who succeed regime builders and themselves remain affiliated with the dominant regime (Polk, Bush) are irresistibly attracted to "splendid little wars" (p. 431), which I don't think does justice to the complexity of our involvement in the Persian Gulf nor for that matter to Polk's policies. Nor do I think it is anything more than a cum hoc fallacy.

My final reservation involves Skowronek's conclusion that the typical presidents of the future might be the outsiders engaged in the politics of preemption, as they engage in attempts to construct political authority, bereft of the resources of any regime. It seems to me that this conclusion is debatable on three grounds: first, a succession of such presidents would be insupportable; after one crashes and burns, we usually get a successor that operates quite differently (Polk after Tyler, Ulysses Grant after Andrew Johnson, Warren Harding after Wilson, Gerald Ford after Nixon). Second, a presidency permanently unmoored from any regime or structure of authority does not lead to a politics of "perpetual preemption" (p. 444), since there would be no regime to preempt, given the definitions of regime-building that seem to require presidential participation in their creation. Skowronek is really forecasting a new era of personalist cowboy politics come to the White House. In the past, countervailing pressures often produce a very different successor: William Howard Taft after Teddy Roosevelt as the obvious (and literal) example, and Martin Van Buren and William Henry Harrison after Jackson. Third, it seems to me that Skowronek may be minimizing the possibilities for new eras of regime construction and that he is unfairly dismissive of the possibilities for fundamental change that they might represent. I kept thinking that Skowronek was really claiming "The End of History" in Amer-

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ican presidential politics, because he is fed up with presidents that claim the mantle of "great repudiator" or "faithful son" and then cannot deliver the goods (p. 446). Reagan and Bush soured a good many of us on the possibilities of American government, but I remain more hopeful than Skowronek that further possibilities for regime building that will strengthen American democracy remain open.

RICHARD M. PIOUS
Barnard College and Columbia University

The Logic of Accidental Nuclear War *by Bruce G. Blair. Washington, DC, The Brookings Institution, 1993. 364 pp. Cloth, $36.95; paper, $16.95.*

As Blair notes, several recent events have altered the problems associated with the command and control of the superpowers' nuclear forces. For starters, one of the protagonists in the drama, the USSR, has vanished, eliminating the political underpinnings of cold-war nuclear strategy. International competition between Russia and the United States is unlikely to generate mutual nuclear alerts and the unintended ratcheting effects that might lead to accidental war. Simultaneously, armored warfare in Moscow is not reassuring. The issue of negative control over strategic arsenals—preventing nuclear accidents or politically unauthorized activities—will not fade with cold-war rivalries.

Blair has the most to say about cold-war command issues. He notes that the Strategic Air Command (SAC) allowed the goal of destroying thousands of targets inside the Soviet Union to govern nuclear war planning. This extensive target coverage produced a decentralized nuclear command network and rapid nuclear alert procedures; unless the United States fully generated its nuclear forces, it would be impossible to attack designated targets or produce high damage expectancy (DE), the level of damage to targets called for by war plans. Most importantly, huge target sets and high DEs eliminated the possibility that the United States could ride out a nuclear attack. To achieve its military war aims, according to Blair, the United States adopted a de facto launch-on-warning strategy. The U.S. strategic command network emphasized positive control: the United States created a command system that could fire in the brief period between the detection of a Soviet attack and the detonation of nuclear weapons on U.S. soil.

The Soviets emphasized negative control and created a centralized command network. Even though this system has its drawbacks—stringent control procedures and centralization create pressures to adopt a preemptive strategy—Blair notes that it provided several benefits. It was unlikely, for instance, that Soviet politicians would have lost control over the alert posture of their arsenal. In contrast, Blair believes that the decentralized U.S. command network could have

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slipped out of political control, producing pockets of highly alerted strategic forces in a crisis. Additionally, the Soviets maintained their forces at very low levels of alert; initial Soviet alert levels simply raised their forces up to the U.S. day-to-day alert posture.

In terms of his theory of inadvertent escalation, Blair seems to have missed the forest for the trees. Even if SAC was preoccupied with expansive target coverage and high DEs, it appears unrealistic to expect that this military objective would make inadvertent nuclear war more likely. If SAC has ever fulfilled this military objective, it would have failed to achieve its political and strategic purpose of deterring war. Since even high DEs did not offer an escape from Assured Destruction, SAC might have succeeded, in a narrow military sense, as the United States was destroyed. Of course, there are bureaucratic reasons for adopting exacting criteria for deterrence, thereby helping in budgetary battles; but there is evidence that SAC did not apply this philosophy slavishly to operational plans. SAC did incorporate Limited Nuclear Options and target withholds into its war plans, evidence that it was not as rigid as Blair suggests.

Much of Blair's analysis has been overtaken by events, albeit in strange ways. SAC no longer emphasizes DE in its war plans for the simple reason that it no longer exists. SAC has been replaced by Strategic Command, a new combined service outfit with a different organizational essence than its predecessor. Similarly, the Soviets centralized command system might now be a liability. Will the "central" command bunker be on the target list for the next coup?

Although Blair's work lacks the policy relevance he obviously anticipated, he still provides probably the best description of the superpowers' cold-war command networks and command philosophies. Most importantly, he contributes a fine argument about the institutional sources of inadvertent escalation to the expanding literature on the subject.

JAMES J. WIRTZ
Naval Postgraduate School

Challenging the Civil Rights Establishment: Profiles of a New Black Vanguard *by Joseph G. Conti and Brad Stetson. Westport, CT, Praeger, 1993. 240 pp. $22.95.*

This book attempts to summarize the current ideas and arguments of a group of blacks (Thomas Sowell, Shelby Steele, Robert L. Woodson, and Glenn C. Loury) who challenge the thinking and positions of what is called the Civil Rights Establishment. The establishment is presented as inclined to attribute much if not all of the subordinated African American status to racism and the legacy of racial suppression. The "new black vanguard," on the contrary, prefer to emphasize ways of overcoming that lowly status through self-reliance; political conservatism; adherence to traditional values of stable family life and hard work;

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and above all by eschewing policies of preferential treatment in favor of "equal treatment in the battle of life." The Civil Rights Establishment, we are told, opts for "political expediency over principles" (p. 4).

Racial discourse, the authors of this book believe, has become distorted. The traditional civil rights establishment has lost its way—no longer emphasizing civil rights for all but social engineering for some; group rights over individual rights; unwilling to condemn the rising out-of-wedlock-birth rates or the mounting crime rate, especially of black crime against blacks.

There is little new in this book's summary treatment. It simply chronicles the many arguments set forth time and again in recent professional and polemical books, articles, television documentaries, and innumerable conference resolutions over the last decade and more. Many of these come, I sadly note, after a riot or other unfortunate eye-catching flare-ups. Although it alludes briefly to Booker T. Washington and his critics earlier in this century, the book suggests that the current controversial battle of ideas is new.

The central weakness of this book is its failure to understand the context and complexities of this subject. From the beginning there has been a sincere debate over ideas about how African Americans ought to conduct their political business. What is grievously missing in this book is any hint at understanding that history and how the current debate relates to perennial arguments. For instance, are the authors aware that it was the NAACP and the National Urban League in the 1930s that warned of the debilitating effects of "relief" (welfare), which would make "Negroes" dependent and wards of the state? The Civil Rights Establishment called for "jobs, not alms." But conservatives, not liberals, turned deaf ears to that call. Conservatives, not liberals or the Civil Rights Establishment, rejected truly universal, nonracial socioeconomic policies that would have mitigated many of the problems we face today and now simplistically and ignorantly articulate as the loss of values and the unwillingness to rely on oneself.

Any attempt to reduce this subject to neat dichotomous categories results in unrevealing polemics. The authors are intent on suggesting that the ideas of the new black vanguard represent the displacement of outmoded ideas and signal the wave of a new black leadership future. If there is one recurrent theme in African American political history, surely this is one. In fact, leaders and organizations have modified their positions, adapted new strategies and tactics, and done so without necessarily sacrificing principle to political expediency. Dr. W. E. B. DuBois, one of the foremost scholar-activists in this saga, once wrote: "We face a condition, not a theory." His lifelong struggle is more informative of the dynamics of the African American leadership process than this book's woefully inadequate treatment of the current discussion.

There is, indeed, an on-going debate, but these two authors are insufficiently endowed to contribute much of anything in the way of substantive analysis.

CHARLES V. HAMILTON
Columbia University

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America's Military Revolution: Strategy and Structure after the Cold War *by Lt. General William E. Odom. Washington, DC, American University Press, 1993. 186 pp. $22.95.*

There is no question about the fact that American defense policy and posture is in the midst of the greatest transition since the decade following the end of World War II. Then, as today, the United States faced the need to reexamine and establish a strategy and a military establishment to meet the requirements both of a new kind of war and of a radically new strategic-political environment. Both the nature of possible future wars and of a strategy to prevent or if necessary to wage them must be assessed anew and appropriate decisions made.

The author, a retired U.S. Army lieutenant general with a career mainly in intelligence, has given these problems serious thought. Now director of national security studies at the Hudson Institute, he has provided a thoughtful analysis with a broad political-military context, historical depth, and geopolitical breadth. He offers well informed and experienced judgments. While other analysts will not necessarily agree with all of Odom's conclusions, as this reviewer does not, all are worth considering.

Odom argues that the United States should take a strong lead in developing a new world order. This appears to be as much a presumption as a conclusion of his analysis, but he presents cogent arguments to support that view. The author is, however, not sanguine that consensus among the members of the UN Security Council will be usual and, therefore, sees a need for American leadership in alliances outside the UN framework, and in some cases for American actions beyond alliances. He is also not sanguine that international economic and social issues will prove solvable through multilateral cooperative or diplomatic measures. Accordingly, "one is forced to conclude that the international system is weakening in the face of new tensions and challenges" (p. 13). While Odom recognizes that security has become multifaceted, he still sees a major need for military power to sustain a new world order. While wars are not inevitable, we should be prepared to use diplomatic leadership reinforced by military power to help prevent wars or, if necessary, to control levels of violence in them. Rejecting any attempt at a *Pax Americana* or on the other extreme as isolationist American First strategy, Odom calls for a "comparative advantage" approach resting on regional power balances in which the United States would play a leading role, although usually a less dominant one than we had become accustomed to in the cold war.

Odom examines not only the changing geopolitical and technological face of world politics and of possible wars, but also continuing problems of national security management. In addition to issues of force structure and alliances, he emphasizes and discusses the role of intelligence, industrial mobilization and research, and restructuring the U.S. military establishment. He has strong criticism for the National Guard ground forces, sees no need for a large number of

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aircraft carriers, finds the U.S. Marines an "antique luxury," objects to large airborne divisions, yet also opposes the trend to light army divisions. He favors close air support, strategic sealift, and a substantial mobile army force. Overall, he believes the level of U.S. forces should be held no lower than at present. Indeed, the author calls for a debate on requirements before we reduce forces further. "The United States," he warns, "is busy disestablishing its military capabilities before it has thought through the full implications" (p. 172).

A reassessment of American military policy is clearly in order, and Odom offers a constructive contribution to that process.

RAYMOND L. GARTHOFF
The Brookings Institution

Power and Peace: The Diplomacy of John Foster Dulles *by Frederick W. Marks, III. Westport, CT, Praeger, 1993. 297 pp. $49.95.*

The year John Foster Dulles would have turned 100, some of the most distinguished historians of U.S. foreign policy met to assess his record. They could agree only that President Dwight D. Eisenhower's chief diplomatic adviser bore little resemblance to the inflexible moral crusader immortalized in Herblock cartoons. The ambiguity of Dulles's behavior, as reflected in the thousands of documents—many only recently declassified—it generated, precluded a consensus.

Marks attended the conference but omits citing the consequent published volume (which I acknowledge I edited) in his seventy pages of endnotes and twenty-page bibliography. He prefers simplicity to complexity. The Dulles Marks portrays is a unique synthesis of American idealism and realism who exceeds every barometer of greatness and warrants virtually exclusive credit for every administration success. Chief among these are the Korean armistice, the Southeast Asian Treaty Organization, the Austrian State Treaty, and the incorporation of the Federal Republic of Germany into NATO. This last feat was that much more remarkable because Marks suggests that except for himself, Dulles tricked everyone, including all historians, into thinking the idea to use the Western European Union came from the British.

Marks's Dulles also performed brilliantly during the Dien Bien Phu, Vietnam crisis and subsequent Geneva Conference (he was equally brilliant at Berlin before and again at Geneva after), during both the crises over the Offshore Islands, and even throughout the Suez. In each case he demonstrated unsurpassed negotiating skills, uncanny perspicacity and farsight, the proper balance of caution and resolve, and the ability to get along with allies and earn the respect of adversaries. Marks is equally enthusiastic with regard to Dulles's role in the overthrow of Iran's Mohammed Mossadegh and Guatemala's Jacobo Arbenz, although in

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these operations the author assigns primary responsibility to the indigenous people in both nations, not Dulles, CIA operatives, or any other North American.

I disagree with many of Marks's judgments, but what troubles me the most is the manner by which he defends them. Marks's research is extensive. In addition to mining the National Archives and manuscript collections throughout the United States, he has combed through materials in Great Britain, France, Canada, the Republic of China, and Guatemala. For this he should be commended. But for his scholarship he should not. His notes betray a disconcerting selectivity in the use of both primary and secondary sources. What is more, coming at the end of paragraphs, they often contain multiple citations enveloping correspondence, memoranda, oral history transcripts, the secondary literature, memoirs, and other kinds of data that run the spectrum of reliability. Attempts to correlate the specific evidence to the specific argument will frustrate any reader. Marks's format also obscures unsubstantiated assertions. Few readers will probably note, for example, that he provides no support for his claim that Soviet assistance to Arbenz offset that which the United States extended to Guatemala's counterrevolutionaries (nor might they be aware that U.S. documents, not cited by Marks, reveal the State Department's futile effort to find incriminating evidence).

Eisenhower revisionists, moreover, will not be alone in objecting to Marks's strategy of inflating Dulles by deflating the president. He adds a new wrinkle to the old orthodoxy that the secretary was "the driving force behind most key decisions" (p. 39). Eisenhower's disposition for military intervention, his failure to appreciate the nuclear revolution, his lack of conviction, and other shortcomings, Marks avers, were sometimes so severe that Dulles had to countermand his instructions or resort to subterfuge. Marks will not let evidence stand in the way of his effort "to redress the longstanding imbalance in historical works" (p. xi) on Eisenhower foreign policy. Dulles would not have appreciated his effort; neither will scholars.

RICHARD H. IMMERMAN
Temple University

Force and Diplomacy in the Future *by Stephen J. Cimbala. Westport, CT, Praeger, 1992. 242 pp. $47.95.*

This collection of essays, written as the cold war was ending, addresses the relationship between force and statecraft "as it might be viewed by the major powers" (p. 1). The four main chapters deal with important topics: NATO's nuclear strategy during the cold war, the use of politico-military coercion to evict Iraq from Kuwait in 1990 and 1991, the relevance of Carl von Clausewitz to contemporary problems of deterrence and escalation, and punishment and

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denial in nuclear strategy. While each of these complex issues is discussed lucidly and the author shows an impressive command of the literature, the title is really misleading: little of the book discusses the future of force in any concrete way. Instead, we are given a useful retrospective on Soviet-American strategies during the cold war with a few hints as to how force might be useful in the future.

One major idea that does receive unusually good discussion is Clausewitz's notion of friction—that is, those unplanned obstacles to military success caused by bad weather, organizational and communications foulups, and the like rather than the enemy. Cimbala usefully distinguishes between simple friction, on the one hand, and that involving multiple parts of the military machine. This takes us beyond the powerful but fairly simple discussion in Clausewitz's *On War*. For a state that relies as much on logistical effectiveness and quick victories as the United States, these pages are a useful reminder of how many things can inadvertently go wrong when force is used, even with the most careful planning.

Unfortunately, much of the rest of the book makes fairly commonplace points or dwells on cold war history to little apparent end. Near the end of a chapter on NATO nuclear strategy, although Cimbala admits that he might have dwelt too much on the cold war, he fails to take the next step and ask whether nuclear weapons are likely to have major strategic functions within NATO from now on. He says that "the more destructive weapons become, the more self-defeating escalation is. The logic of prevailing on the battlefield may contradict the logic of policy, which is that some outcomes have unacceptable prices" (p. 134). This leaves entirely open whether nuclear weapons and threats will be strategically useful in the future and, if so, under what conditions. Similarly, he tells us that "against an opponent who refuses to be coerced, only sheer destruction and brute force will set the stage for conflict resolution" (p. 97). Is this all we can learn from the Gulf crisis and war?

It is admittedly difficult to think about the future of force when the structure of the international system is changing and the cold war focus on nuclear threats and crisis management is being replaced by a preoccupation with proliferation and, with much less emphasis, regional conflicts that do not directly threaten the industrial countries or former members of the Warsaw Pact. New problems, it seems, appear so quickly that we cannot gain perspective: at one moment the United Nations is most countries' best hope for conflict management, while at the next it seems hopelessly ill equipped and overburdened; NATO seems these days both to be on its last legs and to be very attractive to those who live in Middle and Eastern Europe. Still, one could imagine a more useful way to structure this kind of discussion, for example by comparing cold war and emerging coalition patterns, collective enforcement mechanisms, weapons proliferation patterns, and so on. That would have made for a book that more closely fits the title of this one.

JOSEPH LEPGOLD
Georgetown University

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Politics in the Lifeboat: Immigrants and the American Democratic Order *by John C. Harles. Boulder, CO, Westview Press, 1993. 245 pp. $39.95.*

The major theme of this book is that immigrants contribute to the stability of American society and support their adopted country's political system, even though conventional political theory argues ethnic diversity is disruptive or threatening to the political equilibrium of a democracy. Even more than native born Americans, immigrants are enthusiastic and ardent supporters of the American experience, in part because they chose to come to this country and because the country they chose to live in has provided them with a better life than the one they had or could expect to have had in their country of birth.

By comparison, the United States is a society that deserves and receives their respect and loyalty. Immigrants have also played important roles in preserving the democratic order of American society. While the immigrant experience may not be unique to American society, the author believes it is unusual. Part of the explanation for why immigrants to the United States may be more enthusiastic supporters of their adopted country than are immigrants to other western democratic societies is that the United States makes it easier for them to become "Americans." Citizenship and American identity is a matter of time and will. In countries such as Germany, immigrants are called guest workers and are not allowed to become citizens. In such culturally homogenous countries as Great Britain and France, even though immigrants are formally granted the right of citizenship, their racial and ethnic characteristics exclude them from the national community; they remain outsiders. Immigrants to Canada find it difficult to find a common, clearly defined Canadian experience or culture with which to identify. The author fails to mention such immigrant-receiving societies as Australia and Israel to which the American immigrant experience might be compared.

To flesh out his thesis, the author relies primarily on the historical record. He also provides some empirical data in the form of thirty in-depth interviews with Laotian immigrants who arrived in the United States between two and twenty-one years ago. Laotian immigrants were selected because "of their cultural exoticness" (p. 144). Harles argues that Laotians provide a particularly good test case of the standard political analysis by which he means that the greater the distance between the immigrant group and the host society, the more likely the group is to disturb the consensus on which American stability rests. In addition, the fact that the Laotians were refugees, that they had to flee their homeland, that they did not have the luxury to choose either to stay or to migrate wherever they wished, might have made them less enthusiastic supporters of the American system. The interviews corroborate Harles's thesis that immigrants support, admire, and want to contribute to the American experience. Initially, they play a passive role vis à vis American political life. They work hard; focus much of their energies on their families, particularly their children's education; look forward to acquiring citizenship and to participating in the political life of their new country by voting. They do not make demands on the system, nor do they seek to change

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or disturb it. In the words of one respondent, "anybody who is industrious, works hard, and studies hard can always succeed in America" (p. 157).

But in fact, the Laotian data do not provide as strong evidence for the author's thesis as the historical record. Wisely, Harles spends two-thirds of the book reviewing the role of immigrants in American society. He reminds his readers that when voluntary immigration is the major source of a society's ethnic and cultural heterogeneity, rather than a heterogeneity that is founded on coercion, the diverse ethnic, racial, and religious groups are likely to identify with the political community and are not likely to seek to destabilize or disrupt it. Most immigrants came to the United States to seek a better life. They sought relief from economic, political, and religious distress. In most instances they found the relief they sought. They found the freedom to accumulate wealth, to pursue their religion, and to gain full political rights of citizenship.

While Harles does not make an explicit plea for more immigrants, the evidence he provides clearly supports a pro-immigration policy and argues strongly against the anti-immigrant sentiments heard in the land today. I especially recommend this book to anyone who doubts the positive experience and contributions that immigrants have and will continue to make to American society.

RITA JAMES SIMON
The American University

Politics East and West: A Comparison of Japanese and British Political Culture *by Curtis Martin and Bruce Stronach. New York, M. E. Sharpe, 1992. 335 pp. Cloth, $49.95; paper, $16.95.*

It is a welcome relief to find a book that provides an analysis of something other than the United States and Japan. The field is inundated with studies of this nature, which is unfortunate since comparative analysis of Japan and the United States is a little like weighing apples and oranges. In many ways Japan has more in common with several Western European democracies such as Britain and Germany (the latter particularly, if electoral reform takes place) than with America. Thus the title, *Politics East and West*, is more appropriate and less audacious than one might ordinarily think.

True, the United States occupied Japan for seven years, and the residue of that American interlude remains in the political economy. Nevertheless, Japan has, at least on the surface, a parliamentary system, while the United States operates under its executive-system democratic cousin.

Still, the largest problem that many observers of Japan have had is that they tend to accept the Japanese system at face value. There is nothing new here. This goes back at least as far as the West's first encounters with Japan in the sixteenth century. It must be remembered that the Meiji Constitution of 1889, which allowed for the establishment of a "modern" government, was essentially

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a device to convince the West that what they saw was what they got: a modern state unworthy of the unequal treaties that had been imposed on them. Even the reforms that took place under U.S. tutelage were largely imposed, not from the grass roots. Right from the outset, the evolution of political culture had quite different antecedents from Britain.

Two American scholars have taken on the task of looking at these two systems. So one can ask if the authors have taken the externals of the Japanese system as the genuine article and how are their conclusions juxtaposed with the British system.

Martin and Stronach's highly detailed examination is richly documented and broken down into three main sections. The first focuses on political values and process, inputs, efficacy and trust, and compliant//subject support. The second deals with political participation, and the final section looks at how the above affects the policy process in both countries.

One of the real strengths of this volume, which is bound to cause some nausea in political science circles, is that the authors see culture as a major influence on politics, particularly when viewing the real differences that exist in the Japanese model. As the authors categorically state, "Specifically, Japanese patterns of behavior in group formation and decision making, including the need for consensus, bottom-up decision making and the tendency toward factionalism in Japanese organizations separate it from many Western models" (p. 244).

Clearly, these phenomena exist in Britain and elsewhere, but the dominance of these norms makes Japan unusual. Like Britain, Japan has a prime minister that is a "first among equals," political parties, and a bureaucratic system. But Japan also has a system that is much less transparent than Britain: in both countries debates are carried on in public, but real decision making in Tokyo is notoriously less transparent. Political corruption, while having a minor role in the national life of Britain, has become practically a national sport in Japan, even under the age of the so-called new politics of Prime Minister Morihiro Hosokawa and his non-Liberal Democratic Party coalition majority.

To a large extent, Martin and Stronach pass the "surface" test I have posed, which makes this a useful volume. This effort is of course not flawless, but I would have little hesitation in recommending it.

ROBERT M. ORR, JR.
Temple University Japan

Governing Italy: The Politics of Bargained Pluralism *by David Hine. New York, Oxford University Press, 1993. 388 pp. Cloth, $59.00; paper, $19.95.*

Italy has lately gained a renewed interest among students of political change. After half a century of stable instability, it has rapidly slipped into a process of political crisis and institutional reform. The all embracing hegemony of Christian

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Democrats over the governmental process has been dismantled at the center, with a sizeable part of its parliamentary class presently indicted for corruption, as well as at the periphery, where the Northern League, an autonomist movement, has quickly grown to be the largest party of the wealthiest region in the country. Conversely, the PDS (former Communist party), once the dominant opposition party, has proved unable to profit from the downfall of its long fought enemy. Much as the change in Italian politics is a dramatic one, it still is in search of an author.

David Hine's excellent book comes at a very appropriate time. Indeed, one might wonder whether the book isn't even too timely. Can a long-term perspective on the Italian political system effectively cope with its abrupt crisis? In fact, Hine gives little space to recent events that have commanded the keenest attention from observers of Italian politics. The question of institutional reform is dealt with in a rather cursory – albeit insightful – way in the concluding chapter. There is hardly any reference to the role of the judiciary, by far the most striking trait in Italian crisis. Yet, the lack of a present focus proves in the end to be the book's major asset.

Governing Italy offers an original account of the workings of the Italian political system with a special emphasis on the institutional dimension. The book is divided in two parts, with the first one dealing with the party system and its economic and social foundations; the second one is dedicated to the constitutional order, parliamentary government, the political executive, and the administrative system both at the center and in the periphery. The Italian party system has been closely scrutinized by an impressive number of studies, and Hine gives us an accurate account of a quite intricate question. He rightly emphasizes that powerful as the Italian parties may have been on organizational grounds and in their access to public resources, they have lacked aggregative capacities. Bargained pluralism is indeed the formula that Hine uses to describe a system that "resembles the open pluralism of American political life as much as the generally more purposive style of European parliamentary government" (p. 1–2). However, Hine is at his best in the second part. His analysis of governmental institutions is extremely well documented and quite original. Through a detailed account of such topics as the budgetary procedure or parliamentary regulations, prime ministerial authority or policy coordination, Hine leads us well beyond the stereotype of Italian inefficiency to show the legal and political roots of the present fragmentation of the governmental process. In this respect, Hine is very cautious about the possibility of reforming the system by the mere adoption of a new electoral law. The route to more *dirigisme* for Italian politics is a long and winding road that needs to be grounded in the past to have a chance to open up a new future.

MAURO CALISE
University of Naples

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The Politics of Antagonism: Understanding Northern Ireland *by Brenda O'Leary and John McGarry. London, Athlone, 1993. 358 pp. $19.95.*

Given the abundance of scholarly literature on Northern Ireland, some readers may wonder why we need yet another primer on "the troubles." O'Leary and McGarry seek to distinguish their work by calling it an "analytical," rather than a chronological history of ethnic antagonism in Northern Ireland. Their effort to forge an analytical history, using concepts and constructs central to political science, is meant to explain "why Northern Ireland has failed to develop a stable democratic order. . . ." (p. 1). Political scientists should welcome and learn from their effort.

O'Leary and McGarry organize their account of ethnic antagonism around the concepts of settler colonialism, hegemonic control, arbitration, and consociationalism, all of which should be familiar to political scientists. These concepts allow the author to organize historical materials and to marshal other types of data and evidence in ways that confirm or disconfirm competing explanations for the development of the troubles and why efforts to resolve them have failed so spectacularly. *The Politics of Antagonism* is especially useful, therefore, because it seeks to do more than just tell a story—it seeks to explain and assess the story through analytical concepts that have general applicability and are not unique to Northern Ireland.

Unfortunately, the effort is hampered by the absence in this work of a sophisticated discussion about what each of the four concepts means, much less an acknowledgment that hiding behind each of them is a substantial amount of academic dispute about their meaning and utility. It may not be necessary to engage these issues if what one wants is a first-order understanding of Northern Ireland, but their truancy limits the value of the book to political scientists who are more interested in the comparative enterprise or who seek to understand Northern Ireland in a larger comparative framework.

Also central to the conceptual framework of *The Politics of Antagonism* is the claim that whatever its other dimensions, be they religious, ethnic, or economic, the essential conflict in Northern Ireland is about nationalism. Moreover, this national conflict, O'Leary and McGarry argue, has both endogenous and exogenous dimensions. The authors "maintain that conflict has been sustained by conflictual external relations between the British and Irish nations. . ." (p. 3).

Both of these assumptions are plausible. Given their centrality to the analysis, however, one expects to find some discussion and defense of them. Instead, we are urged to seek out another work by the same authors in which they promise an extended discussion of the roles religion and religious institutions play in sustaining the conflict. In the meantime, we are asked to take on faith the operating assumption that the "national conflict, which derived from ethnic and religious differentiation, is primary and has an autonomous dynamic of its own" (p. 4).

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Partly because its history is analytical and not chronological, the book offers compelling and critical discussions of the various mechanisms proposed to deal with the troubles. The authors are critical of British efforts at arbitration or direct rule, concluding that by the early 1980s such efforts were no longer even credible. Two chapters on the Anglo-Irish Agreement provide readers with a clear understanding of why this experiment in "coercive consociationalism" ultimately failed as well. Unfortunately, the discussion of the agreement is less critical—and hence somewhat less useful—than other parts of the book.

Notwithstanding its flaws, however, *The Politics of Antagonism* is a useful and careful introduction to the conflict in Northern Ireland. Its efforts to explain the conflict in analytical rather than simply historical terms make the work considerably more useful and more thoughtful than many of the standard works on this sad story.

JOHN E. FINN
Wesleyan University

Numbered Voices: How Opinion Polling Has Shaped American Politics *by Susan Herbst. Chicago, The University of Chicago Press, 1993. 227 pp. $24.95.*

Numbered Voices is an inquiry into the history and meaning of public opinion, designed to scrutinize the nature of the data supplied by public opinion polls and to explain why and how polling data have come to play a major role in American politics. The ultimate goal is to shed light on the linkage between democracy and public opinion polling, using the past to illuminate the present and the future. Susan Herbst, an assistant professor of communication studies and political science at Northwestern University, approaches her masterful analysis from an exceptionally broad interdisciplinary perspective, drawing on a wide range of theories from political science, communication, sociology, anthropology, and philosophy.

The book begins with a brief history of quantification, which Herbst views as a means to achieve rationalization and as a symbolic tool that conveys the impression of precision. She pays particular heed to the theories of Max Weber and Michel Foucault. The overview of quantification is followed by a closer look at the development and consequences of quantification in public opinion measurement. The story starts with the evolution of straw polls in the early nineteenth century and finishes with an overview of current polling and survey research techniques and practices. Herbst also includes a fascinating side trip into the development of techniques to assess crowd size at political rallies.

In the final chapter the author assesses the significance of her findings for understanding the impact of public opinion assessment on the quality of democracy. Here Herbst summarizes many of the complaints made about the impact of polls, such as charges of trivialization and dehumanization of politics when the public's opinions are measured by pitifully brief answers to questions framed

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by pollsters who neither understand nor care about the mindset of most of their respondents. She points out how public opinion symbolism can be exploited by politicians and public relations experts, while carefully noting the inherent limitations of the power of polls to sway political elites and the general public.

Herbst's ultimate conclusion is based on the assumption that a viable democracy still requires widespread political participation by citizens and informed, free-flowing dialogue about the goals of politics and the best means to reach them. Viewed in the light of these goals and the uses made of polls, modern public opinion measurement techniques frequently have been harmful. When published polls make it seem that citizens are, indeed, participating in politics and that poll results represent "public" opinion, other forms of political participation and public opinion generation tend to be increasingly neglected. Polls are not the only reason for these trends, but in their current rigidly structured format and narrow substantive range, they are an important contributing factor, as well as a symptom of political malaise.

In Herbst's view, the solution to the problem of eliciting public opinions based on public discourse does not lie in the abandonment of polling, which serves many useful purposes. Rather, the solution lies in treating polls with the skepticism that they deserve, because their meanings and significance are so frequently distorted. In addition, citizens must be encouraged to participate more fully and frequently in free-flowing debates about political issues of mutual concern.

Numbered Voices deserves careful reading by academics and political professionals who are interested in an original and thought-provoking analysis of why we have polls, what they accomplish, and how they affect the current political scene. Herbst's scholarship is impeccable, her writing is clear and crisp, and her findings are original. One may not agree with all of Herbst's contentions, but every reader will benefit by carefully weighing the issues she raises and the conclusions she draws.

DORIS A. GRABER
University of Illinois at Chicago

Soviet Military Doctrine from Lenin to Gorbachev, 1915–1991 *edited by Willard C. Frank, Jr. and Philip S. Gillette. Westport, CT, Greenwood Press, 1992. 427 pp. $59.95.*

The Soviet Military and the Future *edited by Stephen J. Blank and Jacob W. Kipp. Westport, CT, Greenwood Press, 1992. 316 pp. $49.95.*

For those of us who have attempted to teach Soviet and Russian military doctrine and strategy during the past two tumultuous years, these two books are a long overdue and welcome addition to the literature. The editors and authors are to be congratulated for even attempting to compile a work of this type during such a time of upheaval in the Soviet Union.

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Do not be put off by the use of the term "Soviet" in the titles of these books; they have value even with the new Russia and retained the term Soviet in the title since they are current through the end of the USSR. It will be Soviet military thinking that forms the basis of the military doctrine and strategy in each of the republics that once was a part of the USSR. That is not to say that these new republics will not modify existing thinking—they will—but they will all start with what they already know and had, and that is the subject of these books.

Soviet Military Doctrine from Lenin to Gorbachev, 1915–1991 is derived from a set of papers presented at a conference at the Old Dominion University in May 1989 with additional chapters prepared in 1991. Its strength is the historical review of the evolution of Soviet military thinking from Lenin to the Gorbachev-era. Jake Kipp takes us through the mid-1930s and turns it over to his colleague Dave Glantz for the Second Great Patriotic War. The postwar era is covered by Harriet Scott. These are absolutely superb chapters that have not lost any value with the demise of the USSR.

Over half of *Soviet Military Doctrine from Lenin to Gorbachev, 1915–1991* covers the years between 1985–1991. There are well documented contributions by Ray Garthoff, Dale Herspring, Mary FitzGerald, and others that discuss all of the issues that were debated by specialists during this period. Of note is a chapter by retired Soviet General Major Valentin Larionov and interpretation by Les Grau, Graham Turbiville, and Dave Glantz with a response by Larionov that underscores the difficulty in literature analysis.

A number of contributions are more methodological than substantive. Bruce Menning describes military doctrine and Kent Lee does the same for military science. The latter chapter should be read in conjunction with Aleksey Arbatov's contribution in *Europe and Naval Arms Control in the Gorbachev Era* on how poorly the West understood the Soviet Navy, because it relied too heavily on literature evidence. Indeed, *Soviet Military Doctrine from Lenin to Gorbachev, 1915–1991's* opening chapter by Bob Bathurst sets the stage for failures in understanding the Russians and probably reflects thinking that we can see further developed in his new book.

Soviet Military Doctrine ends without a summary, although one can read the editor's introduction again as a conclusion. The professional interested in these issues is encouraged to then turn to *The Soviet Military and the Future* for additional and follow-on discussions of additional issues raised in the first book. *The Soviet Military and the Future*, also current through mid-1991, contains chapters by many of the same authors as in *Soviet Military Doctrine* but with subject matters that generally expand upon the content.

Generally works on the Soviet military have lacked a naval contribution, but in *The Soviet Military and the Future*, there are two chapters by Bill Green and Stephen Blank as well as reference to naval matters in a number of others. There is also a good discussion of escalation and nuclear issues by Steve Cimbala. Other unusual contributions include Michael Checinski's chapter on the economy

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and conversion, Graham Turbiville's section on nonmilitary security threats, and a duscussion of ethnic issues by David Jones.

John Erickson, Phil Petersen, and Joshua Spero document the recent military reform efforts. Chapters by Jake Kipp and Mary FitzGerald place the lessons of Operation Desert Storm in the context of these debates and suggest how the Russian military has reacted. Understandably, there are few hard conclusions about where the Russian military armed forces are going in *The Soviet Military and the Future*, but after all the Russians themselves are still debating the issues. David Glantz's chapter on the view of future is probably the best overall assessment. One can only read about these ongoing debates, and this book is an excellent source of such information.

Bill Green's chapter analyzes the methodologies of how we know what we knew and recommends shifting from a mission-capability approach, although he too should consider Aleksey Arbatov's chapter in *Europe and Naval Arms Control in the Gorbachev Era*.

Given the Warsaw Pact war plans now available to researchers, it seems that we should do a major reassessment of how we know about other nations, given the possibility that we may have just had it very wrong. When this reviewer discussed these war plans in Russia with military specialists, he was told that they were the mainstream for operational war planning and that their inconsistency with the Ogarkov publications could be explained by the fact that Ogarkov's writings only represented the public side of a theoretical debate and they did not reflect actual policy. It really is a shame that the authors of either of these two books did not appear to have access to these war plans (published in the September/October 1991 issue of *Survival* by the International Institute for Strategic Studies) so that we could see how they would have reacted.

These books are both strongly recommended, and somewhere a follow-on should be in the works that will give due consideration to these war plans and the Arbatov claim that the military press was a forum for theoretical discussion that had no bearing on planning or strategic thinking. If this is true, then past research that has been based primarily on literature evidence, or whose analysis of hardware, exercises, and deployments was shaped by the literature evidence, is subject to wholesale review.

JAMES J. TRITTEN
Naval Doctrine Command

Manipulation and Consent: How Voters and Leaders Manage Complexity *by David J. Elkins. Vancouver, British Columbia, UBC Press, 1993. 248 pp. $65.00.*

Based on a highly original survey study of the 1979 federal and provincial elections in British Columbia, this book offers an important and impressive contribution to the debate about the political attentiveness and sophistication of ordinary

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citizens. The debate began with Robert Lane's challenge to the dim portrayal of the American electorate in Philip Converse's seminal article, "The Nature of Belief Systems in Mass Publics" and related work. Lane and others have argued that Converse too narrowly expected citizens to organize their attitudes and opinions along the ideological lines readily found in the discourse of political leaders, parties, and other elites. The Lane camp has maintained that individuals will try to manage the complexity of politics in a variety of ways and that researchers ought to investigate these through highly unstructured intensive interviews.

Elkins falls closer to (though not simply in) the Lane than Converse camp in that he relies on systematically crafted open-ended survey questions asking respondents what issues are important to them, what these issues mean to them, what are the specific problems that they see, where they stand on the issues, what should be done, and what level of government should be responsible for handling the problems cited. This is, indeed, an advancement in methodology (and Elkins does some neat analyses of "don't know" responses). From these rich data he finds that while there are wide variations among members of the 1979 British Columbian electorate in the specific issues they cite, their responses to the follow-up questions about these issues can hardly be judged as incapable. Moreover, Elkins offers evidence that these differences across individuals have a common basis in a political culture of "moralism," "populism," and notions of individual versus collective responsibility (Chapter 6). These attitudes and their underpinnings, as defenders of the public's competence would hope, can also be connected to party politics and elections. Further, there is evidence that voters have voted "strategically" for viable second choice parties or candidates rather than vote for first choices who have no chance in winning elections at different levels (Chapter 7).

These findings reveal a citizenry that consists of many capable and apparently sensible issue publics, a concept resurrected from Converse. Elkins takes this much further than Converse in arguing that such issue publics, when aggregated, constitute a collective public opinion or electorate that fulfills the normative requirements for pluralistic democracy: there is a worthy public to respond to and also one that leaders can persuade, educate, or otherwise manipulate "to achieve some degree of consensus or to at least construct a majority position within the bounds set by intense issue publics" (p. 30). Thus leaders can help in aggregating and determining stable policy choices (escaping the devastating pitfall of Kenneth J. Arrow's Impossibility Theorem that states that there are circumstances under which it is impossible to determine a stable majority preference.

This book was clearly written for an academic audience interested in the Converse-Lane debate and evidence bearing on the public's rationality. Students of Canadian political behavior will also find it of interest. The data are complicated but are presented clearly. Certain limitations in the data raise important questions for further study: What would Elkins's methodology reveal for American and other electorates? Were his findings for Canada peculiar to 1979 when British

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Columbians faced both provincial and federal elections? Without data on the attitudes and behavior of leaders and without public data over time, the book lacks the evidence it needs concerning how leaders manage complexity and how they successfully, if at all, manipulate voters. Further, to what extent has this manipulation in various cases been a sinister rather than a constructive process for democracy?

ROBERT Y. SHAPIRO
Columbia University

A Generation of Seekers: The Spiritual Journeys of the Baby Boom Generation *by Wade Clarke Roof. New York, Harper Collins, 1993. 294 pp. Paper, $12.00.*

As the subtitle of the book indicates, Roof proposes to study the current religious situation of those born between 1946 and 1964, the so-called boomers. Since as Roof notes, the cohort(s) involved are large and currently dominant in American society, the work can expect to have a large audience especially among those elite boomers who still like to think that there's something special about their generation. Part of the problem about any such project is defining the cohort(s) being studied. Roof eschews the decade approach so beloved by the popular media and uses demography. For him the boomers are quite literally those who were born during the years of high birth rates between 1946 and 1964.

One might pause to consider the wisdom of such a choice. It assumes that date of birth (or date of coming of age) correlates with cultural change. But that is not self-evidently true, despite media assumptions to the contrary. Were those born during the World War II years, when the birth rate was already rising, all that different from those born in the late 1940s? Or were those born after 1964 (and hence coming of age in the middle 1980s) all that different from those who were born in the early 1960s and coming of age in the early 1980s? Is it not better to discount cultural assumptions imposed by mass media paradigms and proceed empirically with the smallest age spreads that your data make possible? Would not five-year spans be more useful for measuring trends than ten, to say nothing of twenty-year spans, especially since Roof himself reports notable differences between those who matured during the Vietnam era and the years after the end of the war?

The thesis of the book is revealed in the title: the boomer generation are seekers, perhaps less denominationally committed than their predecessors but still on a religious search, perhaps more so than those who came before. Yet by his own admission, most young people are still affiliated (or reaffiliated) with their own denominational traditions, if not always active in them, and only 9 percent fall into his category of "highly active" seekers.

But, conceding for the sake of the argument that there are many religious seekers in the boomer cohorts, the critical issue is whether there are any more

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seekers than in previous cohorts. How different are the boomers from their parents at the same age or, for that matter, their younger brothers and sisters?

One cannot answer that question without cohort analysis, the study of birth cohorts as they mature through the life cycle, an analytic method which requires measures of cohort behavior at different points in time. Are those in their twenties now, for example, any more religious or less religious than those who were in their twenties ten or twenty or thirty years ago? In the absence of such longitudinal data (which Roof does not have) one can make no generalizations about how the boomers differ from their predecessors. Rather one is forced back on the assumption that everyone thinks they are different, so they must be different. As Michael Hout remarked to me in a recent letter, trends in survey items that purport to measure opinions vary less than "informed opinion" about public opinion on the same topic. The widely commented upon backlashes against easy abortion, women's rights, and civil liberties during the Reagan years are hard to find.

I am dismayed by Roof's work precisely because methods exist to perform this cohort analysis; there are data available (especially in NORC's General Social Survey) that make cohort analysis possible; and some analyses have already been done, which Roof does not cite. These analyses do not support the contention that the boomers are all that different, despite their conviction that they are.

This observation puts me in an awkward position, because a reviewer is loathe to cite his own work. But in this instance Roof leaves me no choice. Hout and I (1987) analyzed the church attendance patterns of Americans since 1940 and could find no cohort change net of life cycle for American Protestants and a single change for Catholics between 1968 and 1975 (in the wake of the birth control encyclical). Moreover Hout (1993) considered Catholic religious behavior on a wide variety of items and again could not find any cohort phenomena. Hout and I (1988) observed a decline in religious affiliation which began in 1955 and ended in 1980 (affecting those born between 1935 and 1960) and were able to account for that decline entirely by the increase in the age of marriage and the proportion never married. The return to church is characteristically timed with marriage. When the age of marriage increases, so does the age of return to denominational affiliation as part of a broader pattern of social reintegration, which accompanies marriage. Those who never marry or marry very late are less likely to return. Finally, in my own work on prayer (1993) I establish that those who came of age during the 1960s were less likely to pray in their twenties than those who came after them and less likely to pray in their thirties than those who came before them, but only by a few percentage points at either time.

In short, except for the change in marriage patterns, which will mean a net increase in four percentage points (from 3 percent to 7 percent) for those with no religious affiliation, there is no religious difference between the generation of seekers and their predecessors in key religious matters like affiliation, attendance, and prayer.

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I am disappointed in Roof. He is a distinguished scholar. He ought not to have succumbed to the temptation to accept the clichés about boomers. It is easier, one supposes, to talk about a generation of seekers, which the media can understand, than to try to explain the complexities of cohort analysis to journalists, a task at which I confess I have never succeeded. Moreover, religious nonchange is a good deal less interesting than religious change—the latter being in the category of man bites dog.

But there is some question about whether a distinguished scholar can afford to ignore the literature on the subject about which he is writing, especially when some of that literature appears in the premier journal of his profession. One must also say that once again the Lilly Endowment has chosen to fund a project that is, to put the matter mildly, methodologically weak.

ANDREW GREELEY
The University of Chicago

The Carter Years: Toward a New Global Order *by Richard C. Thornton. New York, Paragon House, 1992. 568 pp. $26.95.*

This is the second of a projected three volume study of American foreign policy from the Nixon through Reagan presidencies. Thornton argues that the Carter White House initially intended to build on Henry Kissinger's policy of promoting a new global order of détente with the Soviet Union by disengaging from forward positions on the Soviet periphery and pursuing Strategic Arms Limitation Treaty (SALT) II agreements. Within weeks of taking office, however, American officials discovered that the Soviets had made a dramatic technological breakthrough that yielded them a first strike capability. Emboldened, the Soviets turned away from détente and vigorously embarked upon a global offensive. The Soviets sponsored military action by clients in Syria, Ethiopia, and Vietnam; coups in Yemen and Afghanistan; and Cuban involvement in Angola and Nicaragua. In trying to shape responses, Jimmy Carter's administration fell into disarray. The SALT arms-control process, which Carter had hoped to make the centerpiece of an improved security climate, was siderailed. Rivalry grew between Cyrus Vance, advocating accommodation of the Soviets, and National Security Adviser Zbigniew Brzezinski, pressing for a tough containment policy. Their split undermined Carter's leadership and produced "crisis" and "failure," two of the most repeated words in the book.

In detailed chapters, organized chronologically and regionally, Thornton develops a strong critique of Carter's policy making. In Europe, deployment of Pershing II successfully diminished Soviet advantage and tied West Germany closer to the western alliance, but misguided economic strategy brought a financial crisis between Bonn and Washington. In Asia, Carter failed to pursuade Japan to enlarge its defense expenditures as a complement to America's own

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and had to abandon the goal of withdrawing U.S. troops from South Korea. Thornton bitterly criticizes normalization of relations with China because Chinese leaders gave nothing in return. In the Middle East, Carter's Egyptian-Israeli Peace Treaty actually heightened instability in the region by failing to make progress on Palestinean issues, antagonizing other Arab allies, and stimulating skyrocketing oil prices. In Latin America, the human rights policy irritated relations with larger nations, while it destabilized smaller ones such as Nicaragua. U.S. policy toward the shah of Iran's rapidly weakening government resembled, Thornton writes, "a three-headed dog" with Carter, Vance, and Brzezinski all moving in different directions (p. 271). Overall, Carter's efforts to contain Soviet "adventurism" were not only "ineffective" but a "charade" (p. 406).

Thornton's description of the dynamics of Soviet-American relations raises questions. Did Kissinger's legacy of détente represent movement toward a postcontainment new order, as Thornton argued in his first volume? Did the discovery of a Soviet strategic breakthrough in 1977 constitute the major watershed that Thornton claims? Did the Soviets in 1977 clearly abandon détente to launch a global offensive against which the U.S. then played only a reactive and inept role?

Thornton's interpretation of Carter's contribution to a new order can also be contested. The author stresses how Carter's human rights policy destabilized American power, emphasizes the limitations of the Camp David initiatives, devotes less than one page to the hard-fought Panama Treaties, and never even mentions Zimbabwe or any other nation in southern Africa, an area that Carter considered important. Yet policies in these areas, by emphasizing painstaking, localized negotiation of regional and subregional issues and by providing greater visibility to human rights and democratization, ultimately helped shape some basic priorities in the postcontainment new order.

Thornton's highly readable study is valuable for its detailed descriptions of policy-making processes and disputes. In interpretation, it provides an unrelentingly negative view of Carter's legacy.

EMILY S. ROSENBERG
Macalester College

The Hollow Core: Private Interests in National Policy Making *by John P. Heinz, Edward O. Laumann, Robert D. Nelson, and Robert H. Salisbury. Cambridge, MA, Harvard University Press, 1993. 450 pp. $39.95.*

After being tantalized for over six years by the authors' periodic publication of data and insights from the research on which this book is based, most scholars are sure to find the consummation of this work thoroughly satisfying. The authors mounted the most comprehensive study ever undertaken of what they call the "social structure of interest representation," looking at "the links among individ-

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uals, organizations (both private and governmental), and policy systems" and looking for "the structural attributes of influence" to determine "whether certain role positions are consistently more influential than others" (pp. 7–8). Late in the book, the authors refer to their project as a "kind of probe into the inner space of the American policy system" (p. 408). That it is, and the results of the exploration are uniformly stimulating. Scholars also will be intrigued by the paths and the research tools chosen for this intellectual journey.

The strengths and attractions of this book are far too plentiful to do justice to them here, but two distinguishing features bear mention. First, the authors have assembled an incredibly rich and varied set of empirical data that tell us far more than we've known before about Washington representatives: about their personal, professional, and political characteristics and their social and political values; about their allocation of time and effort among their general work activities and their substantive specialties, their contacts with government officials, and their representational tasks; and about the origins and structure of their collegial ties or networks. And since this book is also about the assorted public officials who are the principal targets of representation, we get similar kinds of data that paint an illuminating portrait of Washington officialdom as well.

Second, the authors decided to embed their research in four substantive policy domains—agriculture, labor, health, and energy—in order to avoid the "alarming tendency" of most research on interest groups to "omit substantive interests from the research design" (p. xiv). The benefits of this research strategy are abundantly clear throughout the book, because the comparative analysis across policy domains makes all the data more vivid, more illuminating, and more provocative than they otherwise would have been in the absence of any differentiation by policy domain.

One of the most compelling parts of the book involves the manipulation of data using smallest space analysis to reveal structural maps of each policy domain, locating different policy actors (mostly in the legislative and executive branches) in the policy space so that one can discern which actors dominate the center of that space and which are at the periphery. Thus we discover, for example, there is no common core across all four domains—no single actor or set of actors consistently in a position to mediate among competing interest groups or to impose solutions. To explore the possibility that private elites, rather than government agencies, perform that central mediation function, the authors use similar analysis of separate data about seventy-two especially prominent lobbyists—notables such as Tommy Boggs, Charls Walker, and William Timmons. But even when focusing on such a list of heavy-hitting generalists, the authors found no identifiable set of core actors, no inner circle of elites capable of mediating among opponents—either across the four policy areas or within any one of them. In other words, maps of each domain reveal "a roughly spherical structure with a hollow core" (p. 300). Explaining their choice of that image for the title of

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the book, the authors note that it is "something like the opposite of the power elite" (p. xvi).

The authors conclude that "while the predominant pattern of policy making is still pluralist, it may well be that the expansion of group participation has reduced the concentration of private power in recent decades, while the concentration of government power has increased" (p. 404). But that has not meant that government is now capable of producing coherent policies or pursuing long-range strategies, since neither private nor governmental actors have much "incentive to look beyond short-term interests." This common "pursuit of immediate interests" by everyone in the system produces policies that are vague and ambiguous and exceedingly incremental. The tremendous volume of policy-making activity in Washington generally amounts to wheel-spinning. "It may seem a paradox," the authors conclude, "but the principal result of the vast amount of interest group activity may be stability in the systems of policy formation" (p. 413).

Because of the sophistication of the research design and the combined talents of these authors, we have in this book the most thorough and masterful treatment ever delivered of the role of private interests in national policy making. *The Hollow Core* will constitute the solid center of research in this field for years to come. It teaches us much, not only about private interests but about policy making, about the variable roles of different actors, and about four important policy areas. No serious student of American politics, regardless of subfield specialty, can afford to be unfamiliar with this important book's authoritative contents.

JOHN T. TIERNEY
Boston College

Banking on Fraud: Drexel, Junk Bonds, and Buyouts *by Mary Zey. New York, Aldine de Gruyter, 1993. 306 pp. Cloth, $43.95; paper, $21.95.*

The author, professor of sociology at Texas A&M University, describes "fraud-facilitated" leveraged buyouts of the 1980s arranged by the brokerage and investment banking firm Drexel, Burnham, and Lambert, chiefly under the direction of Michael Milken. She draws upon material from new accounts, field research, academic writing, and records of litigation. A list of reprehensible practices includes misrepresentation and deception, violation of securities laws, abuse of trust and fiduciary responsibility, and excessive pressure on associated business and financial institutions. Enormous profits were made through what the author considers, correctly, deals that had no comparable economic merit.

Financing with junk (high-yield) bonds created huge profits for the investment firms. As the backing for increases in debt, they would hold out the prospect of using the assets (and future cash flow) of the companies to be acquired. Essentially, forced sale to institutions under their direct or indirect control would

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be used to market new, high-interest debt. The high yields appealed to even generally conservative investors. The author uses the term "fraud" repeatedly in describing the processes.

An environment developed favorable to new deals. The author tells of the deterioration of the concept of ethically acceptable standards. The process included methods of overcoming resistance of corporate managers who would normally exert power more responsibly. Before long the difficulties of some of the companies with heavy, high-interest debt burdens reduced the interest flow to bondholders and depressed the market prices of the bonds. Banks and other owners of the bonds suffered and with them the general economy. (Financial institutions also suffered from defaults on debt based on gross overvaluations of real estate.)

Milken (who remains, we are told, an extremely wealthy man) and some other perpetrators went to jail. The author discusses and endorses the appropriateness of using The Rackateer Influence and Corrupt Organization Act (RICO) where securities actions set a pattern (perhaps as few as two instances) of apparent fraud.

More than half of the book deals with the author's insights regarding corporate control. Her "thesis is that the increase in securities fraud in the 1980s in the United States is related to the long-term shift in the conception of how large firms grow and operate" (p. 251). She criticizes several aspects of her understanding of neoclassical economics as it bears upon control of corporations and the locus of power through time. This reviewer, an economist, finds much with which to agree and questions its originality.

Be that as it may, there *is* challenge in the author's effort to interpret evidence of the change in attitudes about what is acceptable behavior; as actors in the market gained and lost power, they sometimes violated with impunity traditional standards of integrity. Fraud and economic folly were not countered with reasonably accurate promptness by automatic processes of the market, governmental regulation, self-policing of Wall street and the business world, or litigation.

No short review can do justice to a book that includes such an extensive account of events and the author's theorizing about the exercise of power in corporations. Concentration on one set of events leads the author to generalize—extending into the business world where the reviewer knows of no evidence of comparable departure from ethical norms. The author generalizes where caution and responsible restraint would be more in order. The reviewer spotted enough errors, individually rather minor, to raise doubt about the scholarship (for example, the interpretation of the role of the Federal Reserve, p. 245). There are approximately 400 titles in the list of references. Text citations to references serve adequately as substitutions for footnotes. There is a list of central actors, a glossary, and an index.

C. Lowell Harriss
Columbia University
Robert Schalkenbach Foundation, Inc.

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Support for the American Welfare State: The Views of Congress and the Public *by Fay Lomax Cook and Edith J. Barrett. New York, Columbia University Press, 1992. 327 pp. Cloth, $49.50; paper, $16.50.*

The book examines the status of social welfare programs in America from the perspectives of the public and the Congress and explains why they hold the views they do. Many proponents and opponents of the welfare state have assumed that the deficit and the escalating costs of programs have seriously eroded support for social welfare programs. A survey conducted by the authors refutes this assumption; the majority of the respondents want to maintain or increase the benefits for all seven of the social welfare programs included in the study—Social Security, Medicare, Unemployment Insurance, Aid to Families with Dependent Children (AFDC), Medicaid, Food Stamps, and Supplementary Security Income (SSI). The authors attribute these very different results to their survey's differentiation of programs. Other surveys have relied on a single question about support for "welfare"; they argue that this has distorted the perception of support.

It is not surprising that there are significant differences in the amount of support for each of the programs. The major thrust of the book is an effort to explicate the reasons for these differences. The explanations integrate several predictive factors related to the characteristics of the respondents (self-interest, political predisposition, perception of recipients, perception of program effectiveness) and program dimensions (structure and form of assistance, implicit and explicit goals, beneficiary groups, type and level of administration). For example, the differences in support for Social Security, Medicaid, and AFDC are strongly influenced by the respondent's perceptions of "recipient deservingness" and "program effectiveness." But other factors, such as self-interest, political predisposition, and a program dimension (that is, the contributory financing of Social Security) also help to explain the differences.

There are some interesting and significant differences between the responses of members of Congress and those of the public. Both the public and Congress are supportive of Medicare, but the public is more likely to support Social Security and SSI, while members of Congress are more likely to support Medicaid and AFDC. (Does this mean that Social Security is no longer a sacred cow?) Cook and Barrett note that as they reviewed their data they came to the realization that Congress has access to more detailed information than the public respondents. As a result, Congress members are able to make more informed choices, especially on issues related to poverty and means tested programs. Members of Congress know that children are more likely to live in poverty than the elderly, because Social Security and SSI have significantly raised the incomes of the poor elderly.

Oddly enough, the characteristics of a Congress member's constituency (a self-interest factor) have very little effect on the programs he or she supports. Congress members from wealthy districts are just as likely to support programs for the poor as those from predominantly low-income districts. However, polit-

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ical predisposition has a strong effect on support for public respondents and for Congress. Democrats are much more likely to be supportive of social welfare programs than Republicans.

A weakness in the book is related to the nature of survey research. Public support is measured on the basis of what a respondent might do (write a letter, sign a petition, pay higher taxes) to maintain or expand a program rather than on what the respondent has actually done. Support from Congress members is measured from information gleaned from face-to-face interviews that follow a set questionnaire format. Their responses may not necessarily reflect their voting records.

The book is provocative, informative, and suggests many avenues for additional research. It certainly documents the basic premise: social welfare programs in the United States are alive and well.

DONA COOPER HAMILTON
Lehman College of the City University of New York

The Third House: Lobbyists and Lobbying in the States *by Alan Rosenthal. Washington, DC, CQ Press, 1993. 242 pp. Cloth, $27.95; paper, $17.95.*

The state senator telephoned his friend and copartisan, the head of a county government in his home district. "I'm here with the executive director of The Retail Food Merchants," the senator said. "They've been in our corner for years. Real friends. He has concerns about that item pricing bill you're looking at locally. Bills like this will crop up all over the state if you pass yours this month. He'd like to talk to you."

"No problem, senator," the local official said. "We'll set up an appointment as soon as we're done talking."

And so influence flowed, leaving no trace. A friend calling a friend to help a friend.

That was the fruit of lobbying in the state legislature. The lobbyist had established relationships, nurtured them, created friends, done favors, gained access, and called in markers. It's hard to measure, this real stuff of politics and government, but it's very much there, all day, every day in states across the nation.

There's a good deal of scholarship and lots of opinions about lobbying in the states. At one end of the spectrum, the practice is seen as nothing to worry about, a simple manifestation of the constitutionally guaranteed right to free expression, with the efforts of an increasingly complex array of organized interests balancing each other in the fifty state legislatures. At the other, lobbying is perceived as fundamentally corrupting of democratic processes, with big organizations and big money in symbiotic relationships with entrenched power holders.

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After getting it from the horse's mouth (in 1990 and 1991 he generated the data for this study by talking with 105 lobbyists in six states—California, Colorado, Florida, Minnesota, New Jersey, and Texas) Alan Rosenthal concludes that neither of these caricatures is true. Lobbyists, Rosenthal reports, are specialists doing a job they love—as activists, as contractors, as employees of corporations or associations, or even as government officials. Often they work in complex organizational environments, and are as concerned with convincing their organizations, companies, or clients of what is possible or desirable politically as they are with getting favorable action from the state legislature.

Rosenthal confirms (contrary to popular perception) that money, though important, is not lobbyists' greatest asset. Rather, they rely upon expertise and information. Their expertise is in how the process works, who makes it work, and how to get to these key players. It is developed as a result of long service in or involvement with the legislative process. Their information, often proprietary or unavailable elsewhere, is about their cause, agency, business, or policy goal. Even in legislatures with highly developed professional staffs, and there are several included among the six studied here, this information is essential to legislating effectively.

The great irony Rosenthal conveys is that lobbying is a process based upon trust that engenders mistrust. A lobbyist who misleads legislators is soon an ex-lobbyist, for he or she can't be trusted. But it is the very process of lobbying, or the public perception of it, that has nurtured the general decline in citizens' trust in government.

The manner in which interests are represented is increasingly demonized in the popular discussion of politics in America. And in truth, there are problems. Legislators in more than one state have been videotaped accepting large amounts of cash in plain white envelopes. There are indeed lawmakers who regard it as somehow unjust to have to pay for their own dinner during the legislative session. But as Rosenthal reminds us, these excesses are aberrations, not the norm in the lobbying process in state legislatures.

This is a very readable and intelligent book, a worthy addition to Alan Rosenthal's previous efforts to educate scholars, practitioners, and the interested public in the inner workings of American state government. It buttresses with new and convincing evidence what we already knew about lobbying from the work of others. And critics notwithstanding, it amply justifies Rosenthal's conclusions concerning the continued centrality of lobbyists and lobbying to the effective functioning of pluralist democratic systems.

By the way, after respectful consideration of the industry position, the local item pricing bill passed.

GERALD BENJAMIN
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Toward Empowerment: Women and Movement Politics in India *by Leslie J. Calman. Boulder, CO, Westview Press, 1992. 230 pp. Cloth, $45.00; paper, $15.95.*

The goals that shape this study of the Indian women's movement are to broaden social movement theory through the examination of a developing country and an emphasis on movement outcomes, to enhance knowledge of the capacities and limitations of the Indian state, and to draw lessons from the achievements and failures of Indian women to inform practice elsewhere. Based on fieldwork in several Indian cities in 1986, this work examines the contemporary women's movement since its emergence in the 1970s, arguing that there are two major tendencies: an urban-based rights wing focusing on rights and equality and an empowerment wing with both urban and rural sections focusing on participatory democracy and liberation. The author, Leslie Calman, notes that there are divisions within each tendency. In the rights wing there are party-affiliated and autonomous organizations, and in the empowerment wing there are organizations that accept resources from the state and international donors and those that do not.

Calman explains the emergence of the women's movement in terms of the political opportunity structure—a democratic political culture providing space for social movements when the state disregarded human rights and the needs of the poor—and the resources available to the movement—educated, urban, middle-class women, militant poor women, preexisting organizations, and the influence of international feminism, which has made funding available for women's organizations through foundations and governments.

Calman examines the campaigns of the rights wing to address violence against women through the reform of laws concerning rape, dowry, and dowry death. She concludes that while some laws have been reformed and issues have acquired visibility, "[t]he assumption that the state can force a difference in behavior through legal change" (p. 117) is mistaken. She notes that the elite politics of the rights groups are successful when there is no organized opposition, but in instances such as the Shah Bano case, when large numbers mobilized in opposition to the position of the women's movement, the lack of mass outreach limited the effectiveness of the rights wing. On balance, Calman sees the efforts of the empowerment wing as more successful in that its organizations promote women's personal empowerment and enhance women's economic survival through credit, cooperatives, and collective action.

In her conclusion Calman argues that although the women's movement has so far reached only a tiny fraction of the population, its continued growth is essential for the political and economic empowerment of the masses of Indian women. She advocates that women's organizations use Indian governmental and international resources in order to expand and to promote interaction between women and the state. These mechanisms, Calman believes, will enable women to participate in institutional politics and "to actively engage the state" (p. 197).

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I think Calman understates the dangers of cooptation that arise from reliance on outside funding, and I do not believe that all women's groups are similarly situated in terms of their access to external resources. I am more worried than she is that women's participation in institutional politics might mean the state's capture of women. Those quibbles aside, this is a useful case study of a social movement written primarily from a resource mobilization perspective. The focus on outcomes is particularly welcome, because much of the social movement/women's movement literature avoids the difficult question of achievements and limitations. Of several works on women's movements in particular countries read in my class, students preferred this book because of the clarity of its argument and organization.

JANA EVERETT
University of Colorado at Denver

Population Policy and Women's Rights: Transforming Reproductive Choice *by Ruth Dixon-Mueller. Westport, CT, Praeger, 1993. 304 pp. Cloth, $55.00; paper, $17.95.*

The author, a former professor of sociology and demographic researcher at the University of California, draws on a quarter-century of experience in international development and women's welfare to present a compelling argument for an approach to fertility control in developing countries that is more responsive to the concerns of the women such approaches are designed to affect. She explains why population policies should be centered on women's survival and security, and how women's human rights, embodied in international legal instruments, may be invoked and strengthened to this end.

The book's perspective is partly conditioned by the author's current residence and work in Costa Rica, but she possesses the intellectual integrity to locate herself between First and Third Worlds, and to monitor their interactions on matters of population control. She reviews the history of feminists' discomfort with advocacy of birth control spanning over a century, from when neo-Malthusian enthusiasm for contraception was suspected both to subvert wives' refusal of intercourse for fear of unwanted pregnancy and to facilitate husbands' infidelity.

The book modernizes and internationalizes feminists' apprehensions about the motives and effects of the early middle-class preoccupation with uncontrolled population growth among the poorer classes, transposing middle class with developed country and poorer class with developing country interests. The author explains that resistance to international population control policies arises "in large part because they are seen as First World programs aimed at limiting the growth of Third World populations by forcing women to use imported and imposed birth control technologies under unsafe conditions" (p. x). She notes the

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irony that more extreme radical feminists make common cause with right-to-life organizations in urging rejection of all artificial methods of birth control.

Organized in four parts, the book opens by addressing women's rights as human rights, explaining the evolution of the concept of human rights to include the sexual and reproductive rights of women. An overview of the infrastructure of human rights is presented by reference to international legal instruments and institutions. Part Two addresses the politics of feminism and describes birth and population control initiatives as social movements, first in the United States and then in an international perspective. Part Three, entitled "Women's Rights, Women's Lives," gets to the thesis of the book by exposing the centrality of reproductive self-determination to women's comprehensive liberty within their different communities and societies, particularly but not only within developing countries. Historic fears remain that women's sexual independence will cause and encourage women's independence in other ways that destroy the foundations of social control, order, and stability. The concluding part lays out a feminist population policy agenda based on women-centered concepts.

The author, through skillful use of relevant data and of analytical literature well respected within a variety of disciplines, advances her premise that a rational and effective policy approach should place the entitlement to good quality, comprehensive reproductive health services at the center of a focused program for promoting women's economic, social, and political rights. She explains how such an approach would legitimize efforts at population regulation in both national and international settings, and how it would promote the effectiveness, efficiency, and equity of family planning initiatives. The final claim is that women-centered programs can and should be developed that would win joint support of advocates of human rights, women's rights, and reproductive freedom. The book's value is to present a reasoned perspective by which to assess past decades of population control programs and to project toward a more promising future of women-centered policies.

REBECCA J. COOK
University of Toronto

Euro-politics: Institutions and Policymaking in the "New" European Community *edited by Alberta M. Sbragia. Washington, DC, The Brookings Institution, 1992. 303 pp. Cloth, $32.95; paper, $19.95.*

The Social Dimension of 1992: Europe Faces a New EC *by Beverly Springer. New York, Praeger Publishers, 1992. 177 pp. Cloth, $45.00; paper, $15.95.*

There is a basic uncertainty in the American understanding of European integration. Lacking a general theoretical or empirical frame of reference, political scientists and economists too often fall back on the "newness" of European institutions rather than rise to the challenge of making an adequate comparison.

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As a holding strategy, this has the disadvantage of fostering an isolated field of knowledge—one that lacks essential linkages to other areas of discourse.

A wave of scholarly writings has emerged to rectify this defect in the American study of Europe. In particular, two recent books, one edited by University of Pennsylvania Professor Alberta Sbragia and the other written by American Graduate School of International Management (Thunderbird) Professor Beverly Springer, do much to further that agenda. They are both clearly written and persuasively argued.

Sbragia's introduction to her edited volume makes the case for rejecting analysis that treats with the European Community (EC) "exclusively on its own terms" (p. 13). Although European integration has resulted in a unique fusion of sovereign nation states, national governments remain the critical actors. Sbragia contrasts this with American federalism. Her comparison of preference is with federalism in Germany.

David Cameron's chapter examines the causes and consequences of the 1992 initiative. His argument hews between the neorealist and neofunctionalist ideal types: the initiative, Cameron posits, resulted from state action in response to the poor economic situation of the early 1980s. The specific proposals, however, were the "off the shelf" (p. 35) products of earlier activity within the Executive Commission. Cameron concludes that while both ideal types—the neorealist and the neofunctionalist—are important to understanding the integration process, "the Community has been, is now, and will remain a community of states" (p. 74).

Chapters by Guy Peters and Martin Shapiro provide important insight on the functioning of two of the Community's predominant institutions, the Commission and the Court of Justice. Peters emphasizes the importance of bureaucratic politics to understanding the integration process, and Shapiro looks at the past, present, and potential influence of judicial activism. Together, the two essays tilt the balance in favor of the neofunctionalist paradigm, though not enough to dissuade proponents of views such as Cameron's.

John Woolley's chapter looks at monetary integration and policy credibility. He argues that the European Monetary System (EMS) functioned not as a constraint on national actors but as an instrument for crystallizing debate and for framing cooperative solutions. Credibility in the EMS arose from the combination of multilateral institutions and supporting domestic policies. Turning to the prospect of a European Central Bank, Woolley questions whether institutional design is a necessary and sufficient condition for credibility in the fight against inflation. Woolley contends that "domestic political fights" (p. 184) must still be won for credibility to be assured. It is a contention the reasonableness of which should be judged in light of the ongoing crisis in the EMS.

Chapters by Gary Marks and Peter Lange examine, respectively, structural policy and the social dimension of European integration. Marks relies on a careful blend of "state-centric" (p. 192) and "multilevel" (p. 192) notions of political power to test the evolution of Community responsibility for regional develop-

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ment. He admits to a basic uncertainty as to the direction for Community development, and yet he is respectful of the privileged position of state authorities in controlling and shaping the decision-making process. Lange focuses on the role of special interest in the politics of the social dimension. Like Woolley, he contends that the direction of EC policy will "be determined above all by political developments in the member states" (p. 234). Europe will not become a welfare-state written largely, but rather will develop as a complex combination of specific proposals.

Sbragia's conclusion moves beyond the application of a single model to a thought-provoking and comprehensive consideration of the substance of comparison. Her insightful review of the uses of federalism as a concept in political science and integration theory does much to expose the variety of differing assumptions made in the existing literature. She pays respect to the carefully crafted essays assembled in the volume and places them into a larger theoretical framework that gives a unity that edited collections too often lack.

Springer's book is a far-reaching survey of Europe's "Social Dimension." She emphasizes the implications of the completion of the internal market and the Single European Act. While her writing is often more descriptive than analytic, Springer makes three points that reveal much about the nature of the European social policy and, more generally, European integration. First, specific measures for EC social policy have long been supported by a dedicated cadre of Commission functionaries; second, the social dimension acquired salience in the 1980s as a result of the Commission's efforts to stimulate popular support for the completion of the internal market; and third, the repeated failings of national policy have enhanced the legitimacy of social protection at the European level. Taken in combination, these observations lend support to neofunctionalist interpretations of the integration process, which contrast nicely with Lange's more state-centric approach in the Sbragia volume.

If Americans are having difficulty understanding the Community in its present evolution, these two volumes should make the discussion both easier to follow and vastly more interesting.

ERIK JONES
Centre for European Policy Studies

Labor Parties in Postindustrial Societies *edited by Frances Fox Piven. New York, Oxford University Press, 1992. 290 pp. Cloth, $39.95; paper, $16.95.*

This collection of essays centers on the constraints and dilemmas confronting labor parties in the face of broad sociological change. The essays fall into three categories: many provide case histories of parties negotiating internal and external challenges during the 1980s; other address the more general question of ideological and organizational alternatives for these parties in coming years;

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while two of the contributions (Claus Offe and Gosta Esping-Andersen) deal with the related but distinct theme of the changing distribution impact of evolving welfare states.

The decline of labor parties—both electoral and organizational—is discussed through the familiar distinction between environmental and strategic factors. The importance of party strategy is emphasized by Colin Bradford and Jane Jenson, who argue that the failure of the Canadian New Democratic Party (NDP) in the general election of 1988 marked a return to the "contentless populism" (p. 192) of former decades. Alan Arian and Ilan Talmud link the decline of the once dominant Israeli Labor party to an economic policy that discriminated differentially among new immigrant groups and undermined its ability to tap workers' ethnic and nationalistic sentiments. The deleterious effects of industrial change and its associated cleavage structures are addressed by many of the authors—notable here is Arthur M. Ross's subtle account of the ways in which the "hegemonic project" (p. 91) of the French Left adapted in response to such factors in the 1970s to embrace new views of the role of the state, of France's international economic position, and of the terms of bargaining between labor and firms. An underexplored area in the volume is the ways in which policies of incumbent conservative (or bourgeois) parties have undermined parties of the left during the 1980s. An exception is Ivor Crewe's essay, which uses the example of the privatization of state housing in Britain to illustrate the political dimensions of the erosion of Labour constituencies. Relatively successful parties in the 1980s (in Norway and Austria, for example) also receive little attention.

The second theme, the strategic task of constructing a new "social imaginary" (p. 19) for labor parties, is discussed most directly by Joel Krieger, who espouses the need for a "new collectivism" adapted to the realities of increasing overlap between public and private forms of provision. In the only study of subnational party activity, Alan DiGaetano explores the coalitional bases of local political "regimes" (p. 213) in America, although he remains skeptical about the extension of recent "progressive-populist" models beyond a few special cases.

Two of the most interesting essays are the least concerned with the purported theme of the volume. Offe provides a provocative account of the consequences of sociological change and government policies for insider-outsider boundaries in the German welfare state. Esping-Andersen, in the only explicitly comparative essay, argues for the importance of existing institutional systems in shaping the multiple emerging patterns of postindustrialization and cleavage structures. Their fascinating contributions reveal that the volume's focus as a whole is split between labor parties and welfare states. Though the links between these two institutions are many and complex, they are not explicitly analyzed here (other than in Piven's interesting essay on the way in which welfare state development in the United States served to fragment rather than "solidarize" Democrat constituencies within the electorate). This feature, together with the case study format, weakens the theoretical coherence of the volume, giving it instead the flavor of essays that oscillate between connected themes. However, the primary value of this edition

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lies in the historical accounts its essays provide, the sharpness of many of the individual analyses, and in the conclusion that political responses to industrial and social change continue to be both crucial and varied.

STEWART WOOD
Harvard University

Politics in Black and White: Race and Power in Los Angeles *by Raphael J. Sonenshein. Princeton, NJ, Princeton University Press, 1993. 301 pp. $29.95.*

Right on cue as the Tom Bradley era in Los Angeles closes, here is a thorough analysis of the rise, rule, and problems of the biracial coalition that governed the nation's second largest city for two decades. The coverage of this timely contribution goes through the Rodney King beating, trial, and aftermath, and even includes brief sketches of the candidates who sought to succeed Bradley.

In addition to being almost as current as the newspaper, Raphael Sonenshein provides a wealth of detail carefully placed in the evolving history of racial politics of Los Angeles. He describes the emergence of the strains of black and liberal political activism that ultimately merged to elect Tom Bradley major in 1973 and then keep him in office. This impressive analysis augments the usual scholarly source material with interviews of the major players of the Bradley era and with the author's own experiences as a political activist.

In addition to providing an electoral history of the last thirty years, Sonenshein evaluates the consequences of the election of a black mayor in a heavily white city. The results in Los Angeles – greater success in the political than the economic realm – will be familiar to those who have read Rufus Browning, Dale Marshall, and David Tabb's *Protest Is Not Enough* or James Button's *Black and Social Change*.

If this volume contained no more than the detailed study of the political preferences and maneuvering of the mix of forces active in Los Angeles – liberal and conservative whites, Bradley and Mervyn Dymally supporters among blacks and Latinos – it would make a substantial contribution to the urban politics literature. Fortunately, Sonenshein does not stop with descriptive analysis; he explores the implications for coalition theory.

The contributions and limitations of case studies are well known. Sonenshein's additions to theory development place this work at the upper end of the contributions scale. Much of the work on biracial coalitions has focused on the role of shared ideology. To ideology, Sonenshein adds shared interests and leadership as essential elements. An extended comparison of the prolonged success of biracial politics in Los Angeles with the late-coming African-American empowerment in New York illustrates the inadequacy of agreement on ideology alone.

Bradley's ability to win five citywide elections in an electorate in which African Americans constitute a relatively small minority opens the door for a critique

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of black power and traditional liberal perspectives on biracial interaction. These approaches give short shrift to the need for equal status of the coalition participants and mutual respect for the policy desires of the other party. Blacks seeking to go it alone and patronizing white liberals can succeed, but only when one group or the other is large enough to win without partners. If a joint effort is necessary, some white liberals cannot withstand the challenge of a mobilizing black electorate eager to exercise control, a desire which may threaten the position currently enjoyed by liberals. Equally flawed is the black power approach, which assigned whites to the role of an auxiliary walled away from policy decisions.

Much like Moses and the promised land, Sonenshein's book offers a view of what the future may hold for racial coalitions. Los Angeles is ahead of the rest of the nation in the complexity of its ethnic composition. As the need to govern through coalition intensifies, so does the difficulty of finding leaders and allowing each partner to pursue its own interests. The analysis in *Politics in Black and White* offers valuable guidance to those who seek to understand politics in our increasingly diverse society.

CHARLES S. BULLOCK, III
University of Georgia

From Protest to Politics: The New Black Voters in American Elections *by Katherine Tate. New York, Russell Sage Foundation, 1993. 221 pp. $32.50.*

Katherine Tate focuses on the new black voter, those newly registered black voters and previously registered black voters who have been energized by Jesse Jackson's two presidential campaigns. She bases most of her analysis on the National Black Election Study, a panel study of 1,150 black voters conducted in 1984 and 1988. Tate empirically tests many of the recent theories and assertions considering black political participation and comes up with many interesting, if not always conclusive, results. She finds, for example, that the black church continues to be the single most important political organization in the black community; in 1984 low-income blacks were less likely to support Jackson's presidential bid than were middle-income blacks; young blacks are more open to third parties and the Republican party than older blacks; black women are more politically active than black men; and disappointment after Jackson's primary presidential bids did not depress black turnout in 1984 and 1988 general elections.

Tate's opening premise is that participation in electoral politics has done little to improve day-to-day life for most black people. Tate emphatically rejects the notion that blacks have been pluralized into the mainstream of American life. She cites survey results showing that black discontent with race-specific entitlement programs does not indicate black satisfaction with racial progress. Discontent remains high in the black community: a third of blacks in the survey thought *no* racial progress has been made since the 1960s. Nonetheless, Tate finds little willingness among black voters to abandon electoral politics in favor of 1960s-style movement protest.

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Tate explores how black voters view political participation and weigh their political options after decades of black political representation. She characterizes most black leaders as compromising and ineffectual. She cites studies showing that as fewer first-time black candidacies occur, race is declining as a mobilization agent in political campaigns. Lower income blacks, who, according to Tate, benefit little from black political representation, appear to be the first to abandon political activity.

Tate believes that race consciousness is still a potent unifying factor among blacks, although class and age differences are significant. It follows that with able leadership racially-based political action is still possible. The problem becomes one of analyzing the political and organizational strategies of black leaders and breaking down the structural obstacles to black progress. Thus Tate analyzes black support for an independent black political party and black openness to a third party. She finds little black support for either; however she argues that Jackson's political support among blacks was strongest in 1988 when he protested party rules within the Democratic party framework. The lesson is that blacks want protest, but they also want results.

The book is limited by its primary focus on an attitude survey. While stressing the crippling lack of black leadership, it offers limited discussion of organizational and political alternatives. These subjects are not intended to be the locus of Tate's book, but she has established a sound starting point for future discussion. *From Protest to Politics* is an interpretation of current black political participation that should be read by students of black politics and American politics in general.

J. PHILLIP THOMPSON, III
Barnard College

Bitter Fruit: Black Politics and the Chicago Machine, 1931–1991 *by William Grimshaw. Chicago, University of Chicago Press, 1992. 248 pp. $24.95.*

Grimshaw examines the evolution of black political participation in Chicago politics in the decades since the Chicago machine was first consolidated. He combines economic, sociological, and political perspectives to explain the subject of his research, arguing that any one is inadequate to explain the complex interactions and the institution in question. The machine and its workers operate within a profit maximizing framework according to the economic perspective; the sociological perspective focuses on the coalition building activities of the participants. Finally, the political perspective emphasizes the self-interest of the machine's elite.

Chapter 2 reviews the classical works on Chicago politics, particularly Harold Gosnell and James Q. Wilson, classifies their work according to the previous categories, contrasts both the type of interpretations the authors use and the style of politics in the black community in the decades examined. Grimshaw

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considers the differing bases of black electoral attraction to the national Democratic versus the local Democratic party, and also introduces the factors of class into his analysis.

Chapter 3 continues this discussion. The Supreme Court's decision in *Shelly v. Kraemer* opened up an economic divide as the upper classes separated themselves from the poorer sectors of the black population. This was followed by a social and political division in the black population and ultimately was manifested in the organizational and structural competition within the machine. This was symbolized by the decades-long conflict between Congressman and Ward Committeeman William Dawson and Alderman Earl Dickerson, who was according to Grimshaw, an inauthentic representative of the larger black population.

Chapter 4 examines the structure of power in the party organization and challenges Wilson's notion of the submachine Boss role for William Dawson, arguing rather that the first Mayor Richard Daley tolerated, even encouraged the myth in exchange for the reality of his own control. Grimshaw traces the careers of a number of second and third ward black leaders, demonstrates how distinctive their careers were from that of their white colleagues, and reveals how little control Dawson exerted over the area's political evolution after Daley's election. Dawson and Dickerson competed for second ward alderman in 1939, which Dickerson won; for the first congressional district in 1942, which Dawson won; and with Dawson as second ward committeeman eventually refusing to slate Dickerson for the second ward aldermanic post. Grimshaw also looks at the competition for political control of the southside policy wheels which were an important source of funds for the black ward organizations.

Chapters 5 and 6 show that Daley constructed an organization based on personal fealty rather than economic performance in which Irish and Catholic loyalists played a leading role. Black ward leaders, Ralph Metcalfe and Claude Holman, were also selected for loyalty rather than political experience; they were politically insignificant within the machine and were also unable to deal with the conflicts that manifested themselves during the civil rights era.

The last chapters are the least satisfying part of the study, even though they are important. Grimshaw's treatment of the Washington administration and the politics of this era in Chapters 7, 8, and 9 is less richly detailed than one would expect. He does not fully address the depth of his personal involvement in the Washington administration. He mentions his wife Jacky Grimshaw on only three occasions, even though she was Washington's "chief political advisor" (p. x). He notes in passing that he supervised four low-income wards in the 1983 mayoral campaign, but fails to mention which ones or to give the kind of systematic description, analysis, and documentation of that experience that participant observation allows.

It is difficult to comfortably place Chicago within a theoretical model; the velocity of racial and ethnic conflict, crosscut by economic and class interests, combined with the detailed ward histories and coalition groups one must master make this a formidable task. Most researchers of Chicago politics settle for

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emphasis on relentless, descriptively-oriented historical treatment. Grimshaw sets out to develop a theoretical analysis of black political organizations and to explain their relation to the Chicago machine. He introduces a loosely related set of theoretical perspectives within which he places the historical development of the black wards and their eventual citywide engagement during the Washington era.

Grimshaw ultimately is drawn into the historical description of the black wards, and we lose sight of his economic, sociological, and political perspectives by the latter part of the study. No other historical study of the black wards has even been attempted. The fact that he has not fully succeeded in his theoretical task is less important than that *Bitter Fruit* has built some understanding of the complex array of factors that offer partial explanations for Chicago's black political evolution and organizational development.

DIANNE M. PINDERHUGHES
University of Illinois, Urbana-Champaign

Japan Thrice Opened: An Analysis of Relations Between Japan and the United States *by Hideo Ibe, translated by Lynne E. Riggs and Manabu Takechi. New York, Praeger, 1992. 296 pp. $49.95.*

In this highly readable translation of a book originally published in Japanese under a similar title, the author, an economist by training, offers the reader numerous insightful and thought provoking observations on various aspects of the political and diplomatic history of modern Japan. He remarks, for example, that, contrary to the conventional wisdom, the Tokugawa period (1603–1867) was the heyday not so much of the ruling samurai (warrior) class as of officially despised townspeople, that the Japanese negotiators in the Japanese–U.S. negotiations on the eve of the Japanese sneak attack on Pearl Harbor in December 1941 were preoccupied with the danger of domestic strife, and that the failed coup attempt by a band of young naval officers in May 1932 still paved the way for an electoral victory of the pro-military Seiyukai party, while the victory of the antimilitary Minseito party in 1936 led to another failed coup attempt by a band of young army officers and eventually to the dissolution of all political parties. His comments on the behavior of the prewar Japanese press are as scathing: he points out that not a single major Japanese newspaper either condemned the provocation by the Kwantung Army of the so-called China Incident in 1937 nor called for the withdrawal of the Japanese troops then or thereafter and that the jingoism of the Japanese press was not a product of official censorship but of its own making.

The book, however, has a number of problems as well. While the translation is generally very good and the text is both readable and virtually free of factual errors (with a handful of exceptions, such as a wrong date for Commodore Matthew C. Perry's arrival in Japan and the end of the Taisho period, the number

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of seats in the House of Representatives, etc.) the text also contains numerous unsubstantiated declaratory statements and forced arguments. To give only a few examples, the author states without any supporting evidence that following Perry's arrival and the opening of Japan, Americans appreciated Japanese culture but remained disdainful of the Japanese, partly for their easy capitulation to the West; that the Japanese soldiers were so well behaved in the Sino-Japanese and Russo-Japanese wars that they were trusted by the Chinese government and people alike; that in the last round of U.S.–Japanese negotiations before Pearl harbor, the two peoples actually loved each other like a married couple but ended up fighting because they expressed their love very differently; and that most Japanese wanted to join the Anglo-American, rather than the Axis, alliance, but they were prevented from expressing their preference by a handful of fanatical pro-Nazi groups.

In a number of places, but especially in the last chapter on Japan's future course, Ibe also makes what amount to political, rather than scholarly, statements in line with the views of the right-wing groups both within and outside the Liberal Democratic Party. He thus calls for revision of the postwar constitution, especially its pacifist clause, and defends the Japanese leaders' visits to Yasukuni Shrine, which enshrines the spirits of those killed in wars, including Tojo and the six others hanged as war criminals after War World II.

Peppered with numerous perspicacious and enlightening observations about important phases of modern Japanese political and diplomatic history, the book is well worth reading. In light of its highly political slant, however, it should be read with considerable caution.

HARUHIRO FUKUI
University of California at Santa Barbara

Political Leadership in an Age of Constraint: The Australian Experience *by Colin Campbell S.J. and John Halligan. Pittsburgh, University of Pittsburgh Press, 1993. 276 pp. $29.95.*

Of the major actors in the political process, the bureaucracy is the least accessible to outsiders. In the classic Westminster parliamentary systems, of which Australia is one, bureaucrats share an almost Mandarin ethos and a tradition of giving private advice and public deference to the political leadership. Yet they form the critical link between the political world and the delivery of government policies.

The heart and major contribution of the Campbell-Halligan work is its attempt to illuminate this linkage. The authors interviewed 128 senior Australian public servants, using an interview schedule that is reproduced in the appendices, along with some helpful tradecraft tips. The authors use these interviews as the major raw material and documentation for an evaluation of the eight-and-a-half years (1983–1991) of Bob Hawke's Labor government. The interview-based analysis

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is interspersed with discussions of the relevant scholarly literature and debates and the political history of the Hawke years, in which the major challenge was the economic constraints to which the title alludes. The result is a densely packed work that covers a lot of ground.

The first seven chapters treat specific dimensions of Hawke's approach and performance: leadership style and strategy (1), use of central policy-coordination agencies (2), meshing of specific policies and programs with overall strategy (3), economic policy management (4), control of spending (5), reform of the public service (6), and bureaucratic responsiveness and accountability (7). The final chapter places the Australian experience in a comparative context and offers preliminary judgments of the more permanent Hawke legacy in the light of the first year in office of Hawke's former lieutenant, then challenger, and ultimately successor, Paul Keating.

There are pitfalls in any such effort to pack a lot of material into a relatively confined space, and this book does not escape all of them. For nontheorists (including this reviewer) the conceptual discussions are somewhat turbid. Readers who are not already familiar with Australian politics in the 1980s will probably feel their lack of historical referents. Would-be successors to Hawke and Keating will likely leave it to their advisers to derive cookbook lessons for their own approach to managing government. Students of comparative government, however, should find this work a very useful addition to the literature on executive leadership.

The authors could have better served their diverse potential audience with an introductory roadmap showing how they proposed to explore this relatively vast intellectual territory. As previously noted, the first chapter launches us in *medias res*. Only on page 34 are we given an idea of what is to come. A succinct summary of the overall schema appears only on page 222 (of 237 pages of actual text).

The authors' other possible vulnerability is a tendency to indulge in unabashed boosterism or scathing sarcasm on those (fortunately few) occasions when their literary juices overcome their analytical dispassion. In closing, they proclaim that, under Hawke, "[i]n less than a decade, Australia has been converted from an imitator to an innovator increasingly studied by other countries" (p. 237). Yet their own discussion of the differences between Keating and Hawke demonstrates that it is too soon to conclude that the achievements of the Hawke government are truly seminal and transferable rather than reflections of personal style and contemporary requirements. At the other end of the scale, their diatribical dismissal of the Reagan and Bush presidencies is a caricature of the history of that period and a disservice to the metier of criticism.

The relative paucity of works on the great parliamentary democracies of the Pacific, Australia and New Zealand, is an unfortunate fact of the present bibliographic reality of American political science. Despite its blemishes, this work helps fill this gap and thus merits attention from those interested in the problems of modern democracy.

RICHARD W. BAKER
East-West Center

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Reference Books and Other Publications of Interest Received

The ACCESS Guide to Ethnic Conflicts in Europe and the Former Soviet Union *edited by Bruce Seymore, III. Washington, DC, The Fund for Peace, 1994. 171 pp. $19.95.*

Cold War Chronology: Soviet-American Relations, 1945–1991 *by Kenneth Hall. Washington, DC, Congressional Quarterly Inc., 1993. 362 pp. $54.95.*

Current American Government: Spring 1994 Guide *edited by Jerry A. Orvedahl. Washington, DC, Congressional Quarterly Inc., 1994. 148 pp. $15.95.*

Great Justices of the U.S. Supreme Court: Ratings and Case Studies *edited by William D. Pederson and Norman W. Provizer. New York, Peter Lang Publishing, 1993. 388 pp. $32.95.*

Guides to Archives and Manuscript Collections in the United States: An Annotated Bibliography *compiled by Donald L. DeWitt. Westport, CT, Greenwood Press, 1994. 478 pp. $85.00.*

100 Key Documents in American Democracy *edited by Peter B. Levy. Westport, CT, Greenwood Press, 1994. 502 pp. $59.95.*

The Report of the Twentieth Century Fund Task Force on Television and the Campaign of 1992: 1-800-President *with background papers by Kathleen Hall Jamieson, Ken Auletta, and Thomas E. Patterson. New York, The Twentieth Century Fund, 1993. 117 pp. $9.95.*

The Supreme Court Compendium: Data, Decisions, and Developments *by Leon Epstein, Jeffrey A. Segal, Harold J. Spaeth, and Thomas G. Walker. Washington, DC, Congressional Quarterly, Inc., 1993. 741 pp. $54.95.*

Verification under the Chemical Weapons Convention: On-Site Inspection in Chemical Industry Facilities *by Ralf Trapp. New York, Oxford University Press, 1993. 114 pp. $27.00.*

Vital Statistics on Congress, 1993–1994 *by Norman J. Ornstein, Thomas E. Mann, Michael J. Malbin. Washington, DC, Congressional Quarterly Inc., 1994. 279 pp. $7.95.*

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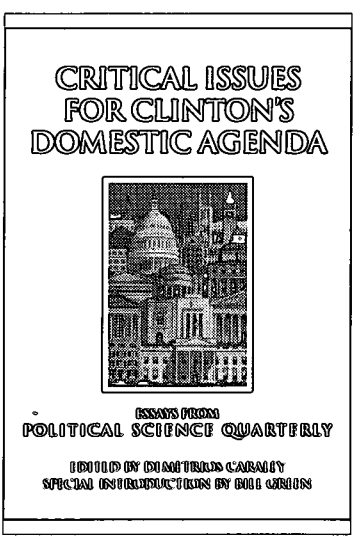
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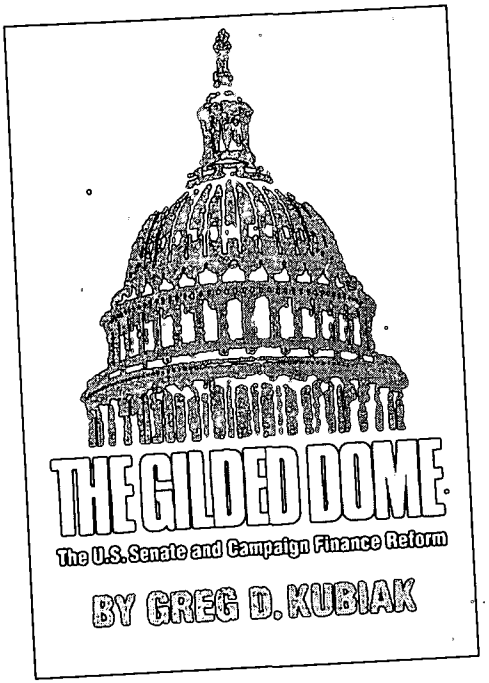

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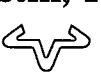

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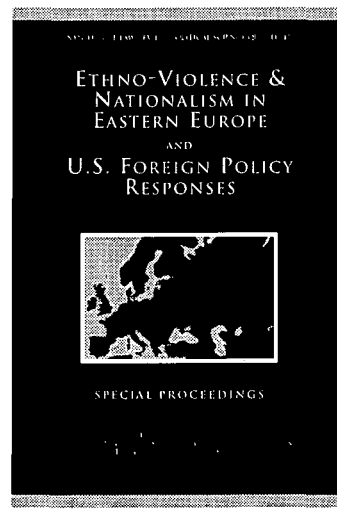

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